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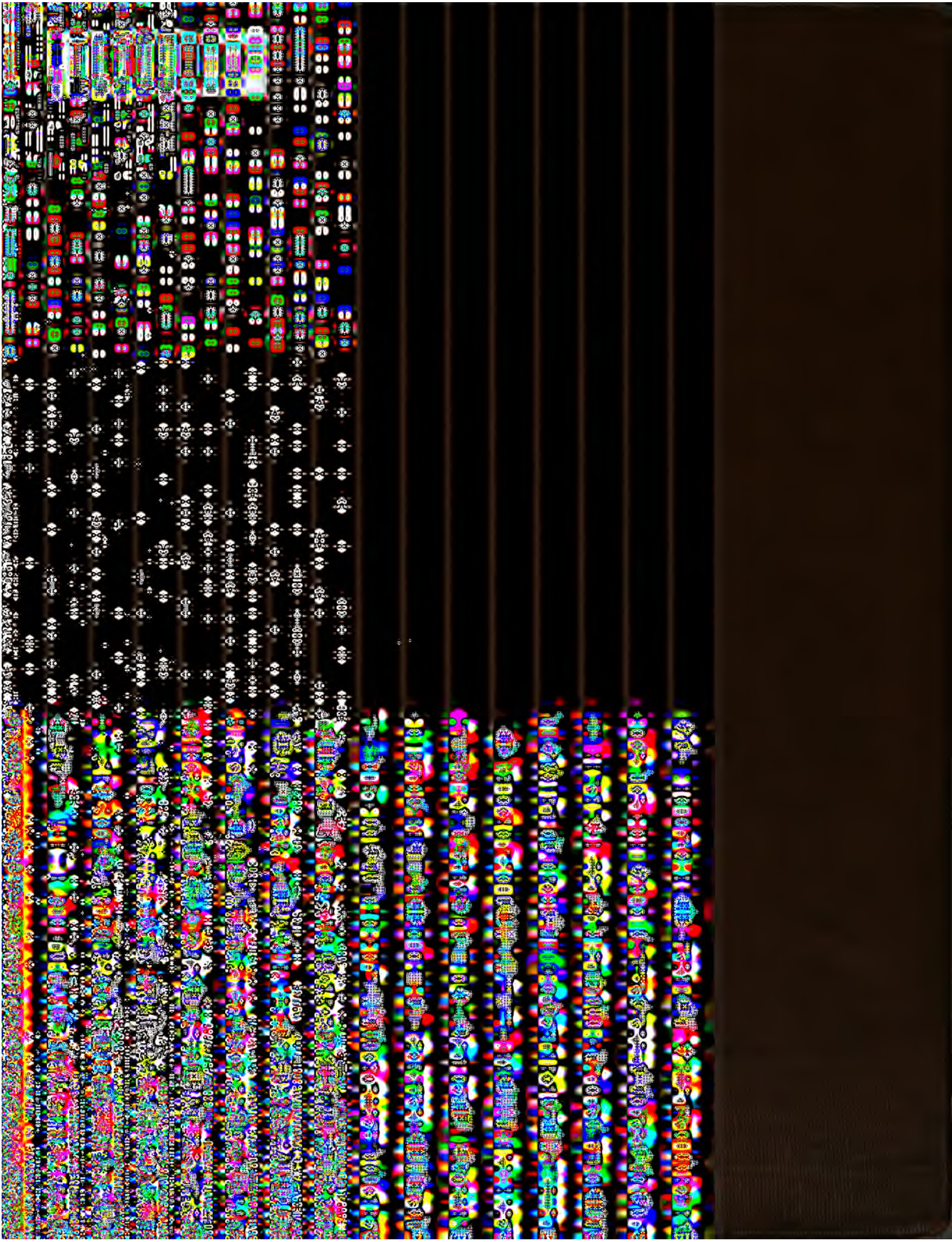
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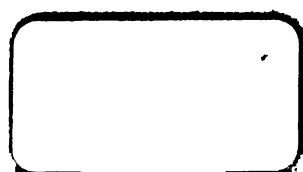
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THE
HISTORY
OF THE
LEGAL POLITY of the ROMAN STATE;
AND OF THE
RISE, PROGRESS, and AGENT
OF THE
ROMAN LAWS.

By THOMAS BEVER, LL.D.



LONDON:

PRINTED FOR W. STRAHAN; AND T. CADELL, IN THE STRAND.

MDCCLXXXI.

1781

WYOMING
CLARK
WYOMING

TO THE RIGHT HONORABLE
FREDERIC LORD NORTH,
FIRST LORD OF THE TREASURY,
CHANCELLOR OF THE EXCHEQUER,
CHANCELLOR OF THE UNIVERSITY OF OXFORD,
LORD WARDEN OF THE CINQUE PORTS,
AND
KNIGHT OF THE MOST NOBLE ORDER OF THE GARTER;

IN TIMES OF THE GREATEST NATIONAL DIFFICULTY
AND DISTRESS,
AN UPRIGHT AND FAITHFUL MINISTER TO THE
BEST OF SOVEREIGNS;
A ZEALOUS AND RESOLUTE
SUPPORTER OF THE CONSTITUTION OF HIS COUNTRY
IN CHURCH AND STATE;
AN ABLE JUDGE AND TRUE FRIEND OF USEFUL LEARNING;
AND, ABOVE ALL, AN HONEST MAN;

THIS
SMALL TOKEN OF ESTEEM AND VENERATION
IS MOST HUMBLY INSCRIBED,

BY

HIS LORDSHIP'S

MOST OBLIGED AND DEVOTED SERVANT,

THE AUTHOR.

NOY V34
2188
VIA 211

A D V E R T I S E M E N T.

WHEN this Work first went to the press, towards the close of 1777, it was intended to have been published within the course of the following year, according to the Author's original manuscript, as then prepared. But he had not proceeded far, before he found occasion to enlarge his plan, and to consult a variety of other authors, beside those mentioned in the *Introduction*. This unforeseen task, together with his daily employment in a very laborious profession, has protracted the publication to the present time. He is likewise under too just apprehensions, that as the Work was often laid aside for several successive weeks or months, and only resumed at certain intervals of leisure, some facts may have been omitted, and some observations have slipped his memory, which might have rendered it more correct, and more worthy the attention of his readers. But, seeing his prospects of a relaxation from business yet at a distance, and being unwilling to let it lie any longer upon his hands, he now submits himself to the Public without any further apology.

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E R R A T A.

- Page vi. line 9. for *reason, we fear*, read *reason to fear*.
 — x. — 18. for *Dutch*, read *Prussian*.
 — 43. note 27. line 10. for *plebum*, read *plebem*.
 — 80. — 33. — 2. for *ix*, read *φ*.
 — 88. — 9. for 323, read 21.
 — 142. — 99. line 5. for *impunæ*, read *impuræ*.
 — 173. line 11. after *at*, insert *bis*.
 — 253. — 21. for *virtuous*, read *worthy*.
 — 346. marg. for 297, read 729.
 — 437. — for 276, read 295.

INTRODUCTION.

Preliminary Observations.—Writers which have been chiefly used in the Course of this Work.

THE unparalleled events and revolutions of the Roman commonwealth afford some of the noblest topics of historical and political speculation, that are to be found in the annals of mankind. Steady, just, and virtuous in her approaches to grandeur; proud, rapacious, and insolent in her meridian; fickle, profligate, and servile in her decline; she exhibits a picture, which, in one view, strikes the contemplative beholder with the most rapturous delight; in another, with the most mortifying disgust; and in all, with astonishment. But this vast and puissant empire, which filled the whole antient world with the glory of its name, and the terror of its arms, is now totally dissolved, “and like the baseless fabric of a vision, hath left not a wreck behind.” It exists only upon the records of past times, an useful and providential example to succeeding generations; in which much is to be seen to admire, much to emulate, and much to abhor.

The necessity of an accurate and comprehensive knowledge of the Roman history and antiquities, to every one who wishes to study the laws with profit and effect, is a truth too self-evident to require any special argument to enforce it. History is the lamp of science. Human institutions, how wise soever in themselves, must always be attended with some internal difficulties, some native obscu-

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rities, which can never be so well understood, as by a clear insight into the peculiar situation and circumstances of the state itself, at the time they were framed. A due respect, however, to the character of the present inquisitive and cultivated age, obliges me to suppose, that every learned and classical reader is already a competent master of that fertile succession of bright and interesting events, which are so copiously and eloquently displayed by a long series of the ablest writers, both of the antient and modern world. Upon this presumption, I shall carefully avoid all needless repetitions of known facts; bringing such only into view as may serve occasionally to illustrate the subject of the ensuing work; namely, the history of the legal polity of this celebrated republic; the general wisdom and equity of which, in spite of some particular blemishes, have laid a more solid foundation for the immortality of her fame, than the extent and splendor of her too often usurped and ill-gotten dominions.

Where the most minute incidents, that concerned the fate of this illustrious people, have been diligently treasured up in the memory of every novice in literature; where even the date of a year, or the scene of a battle, has been esteemed of sufficient importance to blow up the flame of critical contention; it might well be expected, that so noble a system of laws, sought out of the depths of human reason and sound philosophy; which contributed to civilize the manners, and improve the constitutions of the most flourishing countries of modern Europe; should have been studied with unremitting assiduity, by all persons who aspired to the character of elegant scholars and refined politicians. But, whatever justice may have been done to its real merits by other nations of the continent, sorry we are to observe, that in these enlightened regions, where every other branch of polite knowledge is cherished with the most tender regard, this of the Roman or civil law alone, has been too often carelessly thrown aside as
obsolete

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obsolete and useless'; and even represented as dangerous to the civil polity of the nation.

The causes of these singular and inveterate prejudices* are still more inexcusable, as they cannot arise from any want of opportunities of instruction. Most of our public repositories of learning abound with books upon this subject, to a degree of superfluity; and if some few only of the best of these were brought out of their present obscurity, and perused with the attention they richly deserve, they would be found to contain a most ample fund of edifying and curious erudition.

As it is a point therefore of no small consequence, especially to young students, to be well acquainted with the proper sources of information, we shall begin with a short detail of the various writers, upon whose aid we have chiefly relied in the following history; not indeed with a view of entering into a critical examination of their respective merits, for that would require a volume of itself, but only of removing some of those difficulties which too commonly obstruct the avenues of science, and of assisting the progress of the curious reader through the more intricate recesses of it. The present subject, having been hitherto very superficially understood in this country, requires some powerful support, to justify its claim to the notice of the public. We have therefore carefully traced it to the fountain-head, and occasionally subjoined such extracts from thence, as seem most suitable to the uses of illustration; in hopes of

Of the
writers.

* It is said of the famous Lord Chief Justice Hale, that "He set himself to the study of the Roman law, and though he liked the way of judicature in England by juries, much better than that of the civil law, where so much was trusted to the judge, yet he often said, that the true grounds and reasons of law were so well delivered in the Digest, that a man could never understand law as a science, so well as by seeking it there; and therefore lamented much, that it was so little studied in England." Burnet's life of Sir M. Hale, p. 24.

* These have been already examined more at large in a Discourse on the Study of Jurisprudence, printed at Oxford in 1766.

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giving fuller satisfaction to those, who are capable of relishing the elegances of the learned languages, and of feeling the force of original authority.

Historians.

As to the antient writers, both Greek and Latin, who are usually distinguished by the honorable title of Classics, their well-known works and characters give a full sanction to their credibility, without the help of any accessory proofs to establish it. We have only to lament the very imperfect and mutilated state in which by far the greatest part of them have descended to posterity.

Dionysius of Halicarnassus.

Among the Greeks, the first is Dionysius of Halicarnassus, who wrote his history in the time of Augustus, and, without disparagement to the rest of his fraternity, is universally allowed to have given the best account of the antient constitution of Rome, of any author now extant. His work consisted originally of twenty books, of which no more than the eleven first have reached the present age; so that after the beginning of the fourth century from the foundation of Rome, we are entirely deprived of the assistance of this intelligent guide. His works have passed through the hands of various editors, the last of whom was the learned Dr. John Hudson, keeper of the Bodleian library, to whose edition, printed at Oxford, 1704, reference has been always had, whenever it has been necessary to make use of his testimony. Neither ought we to omit the elegant and accurate translation of the same work, by Edward Spelman, Esq; printed at London, 1758, wherein the true spirit of the author has been admirably preserved; and which, by the addition of many judicious annotations, is become almost equally valuable with the original.

Dio Cassius.

The learned world is not less unfortunate in the defective remains of Dio Cassius, who wrote the history of Italy and Rome, in eighty books, from the earliest times, to the reign of Alexander Severus, under whom he enjoyed the high offices of senator and consul, and, what was still more to his honor, the personal friendship of

‡

that

INTRODUCTION.

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that virtuous and excellent prince. His first thirty-five books are entirely lost, except some detached fragments, from which few matters of consequence can now be collected. The most entire, but even those not without some considerable deficiencies, are from the thirty-fifth to the fifty-fourth. To make some amends, however, these include one of the busiest and most important periods of the whole republic, from the year of Rome 686 to 744. The subsequent parts have been in some measure restored by the epitome of John Xiphilin, patriarch of Constantinople in the eleventh century, which is generally esteemed by the learned as a very correct and faithful supplement. The edition here used is the celebrated one published by Herm. Sam. Reimar, Hamburgh, 1750.

Many occasional observations have likewise been selected from ^{Plutarch's} the Lives of Plutarch, the most valuable treasure of biographical anecdotes that ever yet enriched the world of literature. The latest edition of this work is that printed at London, 1729.

Had the histories of Livy and Tacitus been transmitted to us in the same perfect state, in which they certainly came out of the hands of their respective authors, we should have had less to regret from the mutilations of the Grecian writers; but these likewise have been equal sufferers from the cruel ravages of time and barbarism. The fidelity and accuracy of their relations; the precision and justness of their political remarks; the calm and steady spirit of true liberty which breathes through all their sentiments, while they heighten the value of these broken remains which are yet preserved, increase our concern for the other parts, which are now lost beyond all hope of recovery. These precious monuments of true genius, imperfect as they are, together with all the other compilers of the Roman story, of various characters and authority, have been given of late years to the public in one entire body, by the liberality

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liberality of the Baron of Holberg, a respectable German nobleman; accompanied with a series of medals, which are of infinite use in helping the memory, and fixing the many fleeting and unconnected facts of distant times in the mind of the reader. These first began to make their appearance from the press at the university of Heidelberg, in the year 1743, and were completed in 1748.

Various are the uses we have made of these rich treasures of ancient learning; and yet, after the most diligent examination, there is great reason, we fear, that many essential parts of the subject are still very imperfectly known, and are now past the hope of being ever sufficiently illustrated, to satisfy the sanguine curiosity of the true lovers of antiquity. These defects, however, are not barely owing to the casual and irremediable chasms in the writings of such remote ages, but to the partiality or timidity of the authors themselves; who, in all times of violence, especially after the full establishment of Imperial tyranny, generally wrote in manacles; and seldom dared to utter any other truths, than such as either flattered the ambition, or favoured the interest, of the sovereign power. This was too just a matter of complaint, even under the reign of Augustus; which, though in fact an absolute monarchy, was certainly distinguished by many strong marks of mildness and liberality, especially when compared with the government of the majority of his successors. As an instance of the narrow spirit then prevailing (which indeed was much more the character of the age than of the prince), it is related of Claudius Cæsar, that being in his youth a pupil of Livy, and undertaking to compose a history of the late times, under the inspection of his incomparable tutor, he was obliged to desist, from an apprehension of drawing too striking likenesses of several persons then in power; and from the frequent checks given him by his mother and grandmother, who were both of the family and

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faction of Antony³, and were fearful lest he should drop any expression in favor of that party, which might provoke the resentment of the Imperialists.

Tacitus and Dio Cassius were both sensible of the many obstacles to that manly freedom of sentiment, which is the native ornament of every honest and faithful historian; and have described the temper of the same times, in so masterly a manner, as to call for the particular attention of all those who are fond of investigating the real foundations of historical verity⁴.

One of the well-known consequences of the battle of Actium, was the final destruction of the republican form of government, whereby the whole administration of political affairs was thrown into a new channel, and centered ultimately in the emperor and his particular favorites. Upon this memorable event the Greek historian very ably remarks: "That though the present change in the system
" of policy was in fact become necessary, yet it was attended with
" this sensible inconvenience, that the public transactions of the
" times could never be recorded with the same degree of certainty as
" heretofore. Formerly all affairs which concerned the interest of
" the state at large, wherever they originated, were laid before the
" senate and people, so that every member of the community had
" it in his power to obtain a perfect knowledge of them; and
" thus the truth was sure to be discovered, either from the co-

³ " Historiam in adolescentia, hortante
" T. Livio, Sulp. vero Flavio etiam adjuvante,
" scribere aggressus est. Initium autem
" sumpsit historię post cædem Cæsaris dicta-
" toris. Sed et transiit ad inferiora tempora,
" cœpitque a pace civili: cum sentiret neque
" libere, neque vere sibi de superioribus tra-
" dendi potestatem relictam, correptus sæpe
" et a matre et ab avia." Suet. in Claud.

⁴ 1.

⁴ " Post conditam urbem 720 prioris ævi

" annos multi auctores retulerunt, dum res
" populi Romani memorabantur, pari elo-
" quentia. Postquam bellatum apud Ac-
" tium, atque omnem potestatem ad unum
" conferri pacis interfuit, magna illa inge-
" nia cessere. Simul veritas pluribus modis
" infracta. Primum infcitia reipublicę, ut
" alienę, mox libidine assentandi, aut rursus
" odio adversus dominantes. Ita neutris
" cura posteritatis inter insensos vel ob-
" noxios." Tac. Hist. i. 1.

" temporary

“ temporary writers, or from the public monuments; even though
 “ some among them might be induced, either by fear or favour, by
 “ love or hatred, to disguise plain facts with fictitious colours. But
 “ now politics were converted into mysteries; so that if they some-
 “ times happened to be divulged, they were little regarded, for
 “ want of opportunities of examining their true grounds; the em-
 “ perors and their friends, being always suspected of directing every
 “ thing at their own pleasure. Hence many facts were reported as
 “ true, that never had an existence; many real ones were passed over
 “ in utter silence; and the generality were related in a manner very
 “ different from that in which they actually happened. Add to these,
 “ the immense extent of the empire, and the vast variety of business
 “ in agitation at the same point of time in parts far distant from each
 “ other, so that it was impossible to preserve the memory of it en-
 “ tirely; some being only within the knowledge of the agents them-
 “ selves; and some never known to have been done at all.” The
 author, therefore, very candidly confesses, that “ he takes the trans-
 “ actions of these ages merely upon the credit of preceeding writers,
 “ without engaging for their veracity; reserving to himself the right
 “ of private opinion, and of setting facts in a new or different light,
 “ whenever he shall see sufficient reason to justify his conjectures.”

* Ου μίηλοι και ὁμοίως τοῖς προσδοκῶντα μίηλα ταύτα
 πραχθεῖν λαχθῆναι δύναται. πρότερον μὲν γὰρ ἐς τὴν
 τὴν βουλὴν καὶ ἐς τὸν δῆμον πάντα, καὶ ἐν πόλει καὶ
 συμβαίνει, ἐκφράζοντο· καὶ διὰ τοῦτο πάντες τὰ αὐτὰ
 ἠμυνάμενοι, καὶ πολλοὶ συγγραφῆ. καὶ ταῦτα καὶ
 ἡ ἀληθεία αὐτῶν, καὶ τὰ μαλιστα καὶ φοβῶνται
 καὶ χαρίτι, φίλοι τε καὶ ἐχθροὶ τισὶν ἐξέειπον, παρα-
 γούσι τοῖς ἀλλοῖς τοῖς αὐτὰ γράψασιν, τοῖς τε
 ὑπομνημασὶ τοῖς δημοσίαις, τροπῶν τινὰ ἐνρίσκοντο. ἐκ
 δὲ δὴ τὴν χρόνῳ ἐκείνῃ τὰ μὲν πλείω κρυφὰ καὶ δι'
 ἀπεργεῖν γινώσκοντο πρᾶξι. καὶ διὰ πρὸς καὶ τινὰ δημο-
 σιωνδία, ἀλλὰ ἀνελκόμενα γινώσκοντο ἀπὸ πάντων. καὶ γὰρ
 λυγισθῆναι καὶ πραττεῖσθαι πάντα πρὸς τὰ τῶν αὐτῶν κρᾶ-
 σιν τῶν τε παραδυναστεύοντων σφίσι βουλευμάτων ὑπὸ
 πίνεσθαι. καὶ κατὰ τοῦτο πολλὰ μὲν ἐγίνετο, ἀγνοῦ-
 νται· πάντα δὲ, ὡς ἵππιν, ἀλλὰ πῶς ἢ ὡς πραττεῖται,
 διαδρῶνται. καὶ μάλιστα καὶ τὸ τῆς ἀρχῆς μέγεθος
 το, τὴν τῶν πραγμάτων πλῆθος δυσχερὲς αἰσθάναι
 αὐτοὺς παρῆλθαι. ἐν τῇ γὰρ τῇ Ρωμαίων συγχῶ, καὶ παρὰ
 τῇ ὑπερηφανείᾳ πολλὰ, πρὸς τὴν τοῦ πολέμου, αἰ καὶ
 κατὰ ἡμέραν, ὡς ἵππιν, γινώσκονται, πρὸς τὴν τοῦ
 σαφὲς οὐδὲς ἔαδως, ἐξ τῶν προσηλόντων αὐτῶν, γινώ-
 σκει. πλείους δ' ὅσοι οὐδ' ἀκούουσι τὴν ἀρχὴν, ὅ, τὴν
 γινώσκον. ὁδὸν περὶ καὶ ἐνὶ πάντα τὰ ἐξῆς, ὅσα γὰρ καὶ
 ἀναγκαῖον εἶναι ἵππιν, ὡς πρὸς καὶ διδελφῶν φρασῶν,
 ἐν τῇ οὕτως οὕτως, ἐν τῇ καὶ ἰτερώς πῶς ἔχει. προσεῖσαι
 μίηλοι τὴν αὐτῆς καὶ τῆς ἡμῶν δοξασίας, ἐς ὅσον ἐνδεχέσθαι,
 ἐν ὡς ἄλλο τι μάλλον ἢ τὸ θρυλλομένοισι, ἡδυνήθη ἐκ
 πολλῶν ὧν αἰετοῦν, ἢ καὶ ἡκούσθαι, ἢ καὶ εἶδον, τικ-
 μένους. Dio Cass. liii. 19.

The

The same indulgence which this cautious writer has claimed for himself, will, it is hoped, be readily granted to the present adventurer in the field of literature, where difficulties, after the intervention of above fifteen centuries, must be allowed to have increased in more than a tenfold proportion. In the midst of these acknowledged obscurities, and the want of some unerring criterion of truth, all he can do is to collect the various facts and circumstances relating to his subject, in the imperfect state in which he now finds them; and to form such conclusions as may be best warranted by a general review of the whole.

The works of the poets and orators may be considered as very useful and instructive comments upon the most striking transactions of the times in which they lived; the aid therefore of the most eminent of these have been occasionally called in, according to the exigency of the subject.

We shall now recommend to the reader's notice some of those writers who, having confined their researches to juridical subjects alone, come under the particular denomination of *Civilians*. From this class we mean only to select a few of the most celebrated, who, being at the same time both concise and comprehensive, will answer all the present purposes of instruction, especially to young beginners; and, which is a point of no small consequence, will save a great deal of unnecessary reading.

In the front of these stands the fragment of the *Enchiridion* of Pomponius, a lawyer of distinguished character, who flourished some time in the second century, but in what reign is rather uncertain⁶. This is the only *antient* history of the Roman law now in being, and owes its escape from oblivion to the care of Justinian, who has inserted it in the *Digest*⁷. It is short, but satisfac-

⁶ Gravinae Origines Juris, 1. 91. & Hein. vol. iii. p. 66, & seq. edit. Genev. 1744, &c.

⁷ Digest, lib. 1. tit. 2. leg. 2.

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tory as far as it goes; containing a summary of the most memorable epochs of the legal and political constitution of Rome, from Romulus to Augustus; of the magistrates and principal officers of state; and of the celebrated lawyers and orators, so often mentioned with honor by the classic authors, especially Cicero and Horace. This piece has been published many years since in Holland, with a judicious commentary by Vander Meulen; and likewise by Bynkershoek, another equally celebrated advocate of the same country, in a work intitled, "Prætermiffa ad L. ii. D. de Or. Jur. Operum, vol. iii."

Hoppius. The subject is pursued and brought down to later times by Hoppius, in his "Præcognita juris," prefixed to his notes upon Justinian's Institutes; and in a more particular manner by Gravina, in his "Origines juris civilis;" the best edition of which is that published at Leipzig, by Mascovius, a late eminent professor in that university.

Heineccius. To these may be added the "Historia juris civilis" of Heineccius*, a Dutch writer of extensive learning and abilities, who, by his nice skill in criticism, has thrown some very important lights upon the history of those times and events of which we are now going to treat, hitherto but imperfectly understood.

England, though it has never yet failed to produce a succession of great and able Civilians, who have done the highest honor to their profession, both as advocates and statesmen, has contributed but little to the cultivation and advancement of this branch of knowledge, by its writers. The truth is, the study of the Roman law has been so little countenanced by the public in general, that few men of learning have chosen to exercise their talents in a field, where the prospect either of reputation or riches is so very barren and unpromising. Among our own countrymen, one of the most cele-

* Operum, vol. iv.

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brated in this line, is Dr. Arthur Duck⁹, who, in a Latin treatise, Arth. Duck.
intituled, "*De usu et autoritate juris civilis Romanorum per domi-*
nia principum christianorum," has given a short and distinct
account of the canon and feudal, as well as of the civil, law, and
of their after-establishment in the several countries of Europe; a
work containing a great variety of interesting matter, and parti-
cularly useful on account of the number of authorities which he has
selected with great diligence from former writers, and inserted
in the margin. To this may be added another short treatise in the
French language by M. Claude Joseph de Ferriere, since translated
into English, together with the foregoing, and printed at London,
1724. Some later authors likewise, of distinguished character,
might have been mentioned on this occasion; but as they have
generally passed over the historical parts of the subject in slight
preliminary discourses, merely by way of introduction to those legal
matters which were the grand objects of their inquiries, they do not
belong to that order of writers to whom our present observations
are confined¹⁰.

Upon the whole, the author finding several corners of this wide
region unexplored, has ventured out in search of treasures which
seem yet concealed from the view of his countrymen, in hopes of
presenting them with a more complete and exact account of this
famous system of legal polity, than has hitherto appeared in the
English language.

The volume now respectfully submitted to their perusal (with
which his inquiries might properly end) includes the whole history of
the Roman laws, so long as they preserved their influence over this

⁹ This learned writer flourished in the
reign of Charles I. was advocate in the court
arches, and enjoyed several very respectable
offices in his profession.

¹⁰ For a more particular account of these,

vide Discourse on Jurisprudence, &c. p. 33.
35. 37. in the notes. Some others will be
quoted in the course of this work, which
have been omitted above, to avoid prolixity;
but will be taken notice of as they occur.

immense and variable empire. In the twelfth century, however, they revived in a new shape; not as an uniform body, to be received in any given country by the force of their original authority; but as a plentiful mine of miscellaneous and valuable materials, for the common use of all mankind. In this state, they became connected with the feudal and canon laws, which were generated from the barbarity and superstition of the intermediate ages; while the western world was held in a comfortable suspense between Paganism and Christianity. Every constitution of modern Europe being founded upon an union of these three celebrated systems, it will be a work of no less utility than entertainment, to follow them in their progress to these later times, and to point out their effects upon the government of those countries which have been pleased to adopt them. In the course of this pursuit, due attention will be paid to their various operations in the different parts of the British empire, especially in the maritime and ecclesiastical courts, wherein the civil and canon laws more immediately prevail, under the authority of the legislature. Should the present attempt, therefore, have the good fortune to merit a favourable reception from the Public, the remainder will be made the subject of a Second Volume, as soon as ever the Author's professional engagements will afford him leisure. In the mean time he takes this opportunity of acknowledging his obligations to several of his learned friends, to whose judicious hints and corrections he ascribes whatever little reputation his undertaking may presume to expect.

THE
H I S T O R Y
OF THE
LEGAL POLITY of the ROMAN STATE;
AND OF THE
RISE, PROGRESS, and EXTENT
OF THE
R O M A N L A W S.

B O O K I.

The Origin of the Roman State, to the Extinction of the
Regal Government by the Expulsion of Tarquin.

C H A P. I.

*Origin of the Roman People—Four principal Periods of the Roman
Constitution—Romulus—his Rise—Form of Government—Civil In-
stitutions—Tribes and “Curizæ.”—Orders of the State—Patri-
cians—Plebeians—Patrons and Clients—Senators—Knights.*

R ESEARCHES into the origin of antient nations are
liable to endless doubts, and the few discoveries ever made,
are but a poor recompence for the toil of the inquiry. The
most

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Origin of
the Roman
people.

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most therefore that can be affirmed, with any degree of probability, of the first inhabitants of Italy, is, that they were composed of divers hordes or tribes of Greeks, the overflowings of their native habitations, who migrated, in very early days, into the southern parts of the Italian continent; which, from thence, assumed the name of "Magna Græcia." These brought with them their own laws and customs, which the connoisseurs in antiquity pretend are chiefly Arcadian. According to the general practice of those remote and simple ages, they were divided into a number of small, independent communities, which we usually call kingdoms; and to which we very improperly annex the ideas of extent, dignity, and power. From the refuse of these arose, in due time, the renowned empire of the Romans. The few maxims of policy which they imported from their respective parent countries, were afterwards incorporated in the general body, and made a part of their written, or customary law.

Periods of the
Roman Law.

To afford the reader convenient resting-places in his travels through the following instructive field of history, we shall divide it into four principal periods, at which those grand changes happened, that most materially affected the constitution of Rome, and occasioned the several different appearances in her legal system.

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A. N. C.
507.

The first of these begins with Romulus, and ends with the expulsion of Tarquin.

The second opens with the establishment of the consular government; but the period of its conclusion is more difficult to be ascertained, with any degree of precision, as the republican form was not abolished by any open or declarative act of the ruling power, but

* In fixing the dates of these periods, and of the other events which will hereafter be occasionally alluded to, we have followed the vulgar chronology, as we find it generally adopted by the antient writers; though, during the regal period at least, there is the greatest reason to suspect its authenticity. Sir M. Newton's Objections, &c.

gradually

gradually expired under the weight of dictatorial and triumviral despotism. As a line, however, must be drawn somewhere, it may properly enough be fixed at the time when Julius Cæsar, having passed the Rubicon, made himself master of all Italy, and acquired a sovereign controul over every other branch of the constitution.

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A. U. C.

704.

A. N. C. 48.

The third comprehends the whole of the Imperial government, while Rome continued to be the principal seat of empire.

The fourth commences with the removal of it from thence to Byzantium, by Constantine; includes the famous reformation of the Roman laws by Justinian; and extends to the reign of the German emperor Lotharius, who is supposed to have revived and introduced the knowledge of the Civil Law into the western parts of Europe.

A. D. 330.

A. D. 1137.

The Roman historians and poets, to give a greater air of dignity to their republic, and to excite a veneration for its name, have amused their readers with a variety of pompous and romantic accounts of their founder, Romulus, endeavouring to impose him upon the world, for something more than mortal.*

First period.

Romulus.

An obscure and mysterious origin contributed much to this deception, and was the real cause of a considerable part of his future good fortune. Being destitute of any visible terrestrial father, he (or his flatterers for him) boldly adopted a Deity, and popular credulity supplied the defect of truth. Such impositions indeed were commonly practised by the petty lawgivers of these dark heathenish ages; and though they were not less the results of cunning than of enthusiasm, yet when strenuously exerted in subduing the stubborn hearts of savages, and in improving the arts of social life and civil policy, they were not only innocent, but laudable.

* Plut. in Rom.

"Quin et avo comitem sese Mavortius addet

"Romulus; Affaraci quem sanguinis Ilia mater

"Educat, viden' ut geminæ stant vertice cristæ,

"Et pater ipse suo superum jam signat honore?"

VIRG. ÆN. vi. 777.

We.

We, however, who live in more remote times, and are aliens from the Roman name and government, having no interest in humouring such extravagant and superstitious conceits, may venture to draw him in more modest and natural, though not less striking, colours; not as the offspring of a heavenly progenitor; not as the heir apparent of a rich and potent kingdom; but as a deserted foundling, [†] rescued from a lingering and cruel death, by the tender compassion of an humble peasant, and nursed up in the obscurity of a cottage, till an unexpected accident brought him forth into a more public scene of action, and happily restored him to his friends and family.

In those regions of unambitious simplicity, where the greatest prince was little else than the richest herdsman, royal appanages for the support of the heir to the throne were not in use. The best and only inheritance was activity and fortitude. Amply endowed with these manly qualities, the young adventurer sallied forth into the world to be the author of his own fortune; to lay the foundation of a little kingdom of his own; which, as from an imperceptible grain, sprang up gradually into a most luxuriant tree, and covered an immense portion of the earth with the shadow of its branches. To say the truth, when thus arrived in after-times to the summit of human grandeur, under the actual protection of the unknown God, we may easily pardon the pious ignorance of unenlightened pagans, for ascribing that rapid series of successes to the unremitting influence of their tutelary Quirinus, the only cause, within the compass of their corrupt system of religion, adequate to such supernatural effects.

† Whatever opinion this enterprising hero might really entertain of his own original, he shewed himself no more than a man of common sense and penetration; he observed the dictates of ordinary policy, and pursued such methods only as the present exigency of his circumstances suggested. To give life and vigor to his infant colony,

colony, his first step was to make his camp an asylum for all the exiles and refugees from the neighbouring states; a wild band of lawless rustics, who had forfeited all right of protection under their own native governments, and were therefore easily enticed to his banner, much more by an admiration of his actual courage, than by a veneration for his supposed divinity. Thus suddenly and accidentally collected together, the utmost extent of their view probably reached no further, in the beginning, than to live at free quarter upon the country, and to obtain some settled habitations for themselves, in exchange for those from which they had been driven. The first principle, therefore, of their association was purely that of mutual security.

Being, however, totally unacquainted with the mysteries of civil policy, and void of every idea of any regular body of laws, their general became the most obvious and natural object of their respect and obedience. The confidence which their defenceless situation obliged them at first to repose in him, easily grew into habit, and gradually inclined them, without any particular design or forethought, to submit to his sole will and direction.

This state of their primitive constitution (if it may deserve the name) is clearly set forth by Pomponius in the following description: "Initio civitatis nostræ populus sine lege certâ, sine jure certo, " primum agere instituit, omniaque *manu a regibus gubernabantur*." But when these vagabonds found themselves secure in their new settlement, which was at first little more than the circle of their fortification, they then began to feel their own strength, and to aspire to some portion of that liberty, which, their own reason might tell them, was the natural inheritance of the most forlorn

³ D. 1. 2. 2. 1.

And again, "Quod ad magistratus at-
tinet, initio civitatis hujus constat, reges

"omnem potestatem habuisse." Ib. § 14.

"Nobis Romulus ut libitum imperitave-
rat." Tac. Ann. 3. 26.

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ruffic. From the plan of policy soon afterwards established, it is evident, that, notwithstanding the idea we may be apt to entertain of the arbitrary power, the *manual government* (if I may so call it), of the Roman kings, it was really no more than what was very usual among the petty princes of antient Greece, and likewise the feudal chieftains of later ages. These were indeed absolute enough at the head of their armies, but when they had once obtained an establishment by their swords, and were in firm possession of the fruits of their victories, their fellow-adventurers claimed a share in the civil government, and the imaginary phantom of despotism instantly vanished.

It appears, likewise, from the event, as well as from the subsequent division which Romulus himself made of his followers, that he was not only convinced of the justice, but of the utility, of admitting them all to a participation of power in his new commonwealth; and of framing a regular scheme of legislation with their express consent and approbation⁴. There can therefore be no doubt, upon the whole, that the original constitution of Rome was a mixed or limited monarchy; and that the sovereign power, the “dominium” “*eminens*,” as the civilians very properly call it, always resided in the collective body of the people⁵.

We are informed by a very learned and faithful antiquary⁶, that as soon as the building of the city was finished, for the purpose of promoting which he had been principally induced to take upon him the chief command, he summoned the whole people together; and having explained to them the necessity of some fixed and uniform system of polity, he made a voluntary offer of relinquishing the sovereign authority, which he had hitherto exercised, and of

⁴ “Rebus divinis rite perpetratis, vocataque ad concilium multitudinem, quæ coalescere in populi unius corpus nulla re, præter-

“quam legibus poterat, jura dedit.” Liv. 1. 8.

⁵ Grav. de Imp. Rom. 14.

⁶ Dion. Hal. 2. 3-6.

submitting

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submitting to any form of government that should be the most acceptable to themselves. In consequence of this truly patriotic and disinterested proposal, they wisely agreed upon a free monarchy; and, as a reward for this generous act of condescension, with one voice elected him king.

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Romulus being thus raised to this honorable pre-eminence by the unanimous suffrages of a free and grateful people, began the exercise of his new power by distributing his subjects (whose effective force even then consisted of no more than three thousand foot and three hundred horse⁷) into three tribes; every tribe into ten "curiæ," or wards⁸; and each "curia" into ten "decuriæ." Over each of these divisions and subdivisions, he placed a commanding officer, called respectively "Curio" and "Decurio⁹;" and over the whole, a superior, or primate, distinguished by the honorable title of "Curio "Maximus." Having divided the lands into thirty shares, he assigned one to each "curia," first excepting such a part as he thought necessary for the use of the public, and for the support of the temples. Upon the incorporation of the Sabines, these new allies were likewise distributed among the tribes and "curiæ," but without any augmentation of the number of either.

Tribes and
"Curia."

It may not be improper, in this place, to call to the reader's attention, an institution of the ancient kingdom of Peru, mentioned by a celebrated historian of that country¹⁰, and borrowed from thence by our modern English writers¹¹, which bears a striking resemblance, in several interesting particulars, to that of which we are now speaking. This was the civil division of the four great provinces of the empire, made by the second emperor of the family of the Incas, into small parcels, consisting each of ten families, and distinguished by a name

⁷ Dion. Hal. 2. 2.

¹⁰ Garcilasso de la Vega.

⁸ Dion. Hal. 2. 7. D. 1. 2. 2. 2. Grav. O. J. 1. 10.

¹¹ Univ. Mod. Hist. vol. 39. p. 14. edit. 8vo.

⁹ Dion. Hal. 2. 7.

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in the Peruvian language answering exactly, as it is said, to the Roman "decuria." Five of these constituted a higher class; two of the latter, a third, called an hundred; and ten hundreds made the great class, of a thousand. Each of these had its respective supreme officer, whose duty it was to administer justice within his own jurisdiction; and to take care that none of the people committed to his charge should want the necessaries of life, or the means of industry. What did even Alfred more, when he divided this kingdom into hundreds, counties, and sherriffdoms, and established that series of judicature which subsists among us at this day?

These extraordinary instances of policy are here mentioned, to shew what natural analogy will ever appear in all human governments, whose founders were actuated by mere common sense, and the dictates of natural reason; though, on account of their extreme remoteness from each other, both in time and situation, they must have been quite out of the reach of all possible imitation.

The Roman "curiæ" answer, in several particulars, to the modern parishes; being distinguished from each other by certain boundaries, and having every one its own temple, and priest to officiate in the public worship. The assembly of the "curiæ," was called "comitia curiata;" which were a kind of general committee of the whole nation. They acted by their votes, in a manner that will be explained more fully upon a future occasion; and whatever was first approved by a majority among themselves, was referred afterwards to the senate for its final sanction. The business peculiarly assigned to the province of the "curiæ" was, to elect magistrates, to confirm laws¹², and to determine upon war and peace, if the king pleased to consult them upon the subject; but in all these cases their will was entirely dependent upon the superior will of the senate¹³.

¹² "Leges quasdam ipse curiatus ad populum tulit: tulerunt et sequentes reges." D. 1. 2. 2. 2.

¹³ Τῇ δὲ δημοτικῇ πλεονεξία τρία ταῦτα ἐπὶ τῇ ἀρχαίᾳ ἐκείνῃ τῇ καὶ νόμους ἐπικυροῦν, καὶ περὶ πολέμου διαγνώσκειν, ὅταν ὁ βασιλεὺς εἴρῃ, οὐδὲ τούτων ἔχοντι τὴν ἐξουσίαν ἐπιληπτῶν, αἱ μὴ καὶ τῇ βουλῇ ταύτῃ δοκῇ." Dion. Hal. 2. 14.

By

By an equal and popular distribution of the right of suffrage in the "comitia," all orders of the people were indiscriminately mixed, and the meanest plebeian was as much a part of the legislative body, as the greatest senator or patrician. But, notwithstanding this, the administration of justice, both in criminal and civil causes, was reserved to the king, who took cognizance himself of all matters of the greatest moment, and referred those of a more trifling nature to the senators and patricians, who were a sort of coadjutors¹⁴. From the kings it was afterwards transferred to the consuls, and continued absolutely in their hands, till the criminal part of their jurisdiction was restrained by the Valerian law, and the civil, by the famous law of Terentius Arsa, both of which will be mentioned in their proper places. The exercise of this judicial power was indeed quietly submitted to, and gave no umbrage to the poor plebeians, who most probably had but little worth contending for; who were more in danger of foreign than domestic enemies; and who, therefore, did not build their security so much upon the law, as upon the sword, to the use of which every Roman was, in that age, trained from his infancy.

In effect, the whole force of this little nation was concentrated in one compact body of well-disciplined militia, the sure refuge of every free people; the genuine spirit of epidemical bravery being thus kept in perpetual vigor, by affections of the most tender and interesting nature; as those must ever be esteemed, when the soldier is at once the husband, the father, the friend, and the patriot. And to this excellent policy the Romans owed, not only their numerous

¹⁴ Τους μὲν ὑπαίφους—ἀρχῶν, καὶ δικαζῶν, τὰ δὲ ἐλαττονα τοῖς βουλευταῖς ἐπιτρέπειν, πρῶτος—καὶ μετ' ἑαυτοῦ τὰ κοινὰ πράττειν, ἐπὶ τῶν κατὰ μὲν ἰσὺς μὲν γίνονται περὶ τὰς δικὰς πλημμελίας. πολὺν ἔργον μενοῦντας. Ib. § 9. And again, Ib. § 14. Τῶν δὲ ἀδικημάτων τὰ μέγιστα μὲν αὐτοὶ δικάζουσιν,

conquests,

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Plebeians.

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conquests, but also their domestic security; and more than once, their recovery from the verge of ruin and despair¹⁵.

After this general division of the people into tribes and "curiæ," Romulus found it necessary to consider them in a closer light, according to their respective circumstances, either of birth, wealth, wisdom, or experience. Such as were most eminent for any of these qualifications, he honored with the highest dignities and offices of the state¹⁶; conferring upon them the respectable title of

Patricians. By this he meant to remind them, that they were to consider themselves as the fathers of the republic, and as the patrons of the poor and ignorant Plebeians; who were to be employed only in the lower and more laborious offices, such as were better suited to the inferiority of their station and capacity. From this origin arose the relation of Patrons and Clients, so famous in the future ages of the commonwealth; whereby a perpetual alliance was established between the two orders, which was almost as indissoluble as if formed by nature. The many comfortable consequences of this connexion to the poor, was a sufficient reason for the humanity of those times to indulge the plebeians with the privilege of chusing their own patrons; and as this choice was the highest mark of confidence and respect which these helpless peasants could possibly pay to their superiors, the nobles became proud of it, and gloried in such honorable opportunities of exercising the amiable virtues of friendship and benevolence. They valued them-

¹⁵ Cicero, though never much distinguished in the profession of arms, bears a very warm testimony (if it be not mere declamation) to the superiority of the military character above that of all others in the state. For having drawn a lively and humorous contrast of the merits of Servius Sulpicius, the famous lawyer, with those of Muræna the general, he adds: "Ac nimirum (dicendum enim est quod sentio) rei militaris virtus

"præstat cæteris omnibus. Hæc nomen populo Romano, hæc huic urbi æternam gloriam peperit; hæc orbem terrarum parere huic imperio coëgit. Omnes urbanæ res, omnia hæc nostra præclara studia, et hæc forensis laus et industria, latent in tutela ac præsidio bellicæ virtutis." Pro Mur. 9. &c.
¹⁶ Dion. Hal. 2. 8. and 9. Grav. O. J. 1. 1.

selves,

selves, therefore, upon the numerous train of their dependents¹⁷; and made it their peculiar employment to guard them against oppression, to aid them with advice in all matters of difficulty, and to assist them in their private and domestic concerns.

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In return for this protection, the client was bound to consider his patron almost in the light of a parent¹⁸, was to attend him, and make part of his retinue upon public occasions; to relieve him, if reduced to poverty; to contribute to his daughters' portion; and to redeem him, or his children, if taken captives. The connexion was of that close and intimate nature, that the patron and client were not allowed to accuse or bear witness against each other. So sacred were these laws always held, that notwithstanding the many succeeding revolutions in this tumultuous state, and the innumerable diffensions which the avarice and ambition of the great, and the perverse and seditious humor of the populace, created in the heart of it, the sense of honor and fear of infamy were powerful enough to preserve these relations inviolable for more than six hundred years.

Beside these private and personal connexions between individuals only, as the Roman dominions increased, it was common even for whole colonies and cities to put themselves under the patronage of some great and powerful nobleman, whom they were at liberty to chuse for themselves; and the senate paid such a profound respect to this relation, that, in cases of dispute, they would frequently refer these cities to the judgment of their patrons alone¹⁹.

¹⁷ Horace, who is a very faithful recorder of the manners of his own times, when he means to magnify the importance of a great man, says of him,

Illi turba clientium
Sit major. Od. 3. l. 13.

And again, as another characteristic of his grandeur;

Romæ dulce diu fuit et solenne, reclusæ
Mane domo vigilare, clienti promere jura,
Epist. 2. l. 103.

¹⁸ Ἐτέρῃς δὲ τῆς διατῆς ἀπο τῶν πολλῶν διήρει, πατρὸς ῥομαίων, ἐπὶ τῇ προγατῇ, ἐκείνης δὲ κληίδας· αἷμα δὲ πρὸς ἀλλήλης θανάτου ἐννοίαν· αὐτοὶ καὶ μεγάλῃ δίκῃ ὑπαρξάντων ἐκποιήσιν· οὗτοι μὲν ἐκλήγαντο τῇ τῶν ἰσθμῶν καὶ προγατῇ δικάζουσιν, συμβούλους τε πατρὶν καὶ κληίδας.

¹⁹ Dion. Hal. 2. N.

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Senators.

To assist and relieve him in the execution of his office (which served at the same time as a check upon the regal power), Romulus proceeded next to the establishment of a general national council. To this end, he singled out one of the most able and worthy patricians, whom he designed for the president of this new-projected body, and likewise to be a sort of viceroy, or prime minister, to supply his place when engaged with the army. He then directed each tribe to chuse three, and each "curia" three more, all out of the patrician order, and such as, in their own judgments, they should think the best qualified, by their years and abilities. At the head of these he placed him whom he had before chosen, as above mentioned; and thus made up the complete number of a hundred²⁰; which were afterwards increased to two hundred, upon the incorporation of the Sabines²¹. This venerable council, thus constituted, he named the Senate, from the age and superior qualifications of the members of whom it was composed²².

It is no uncommon error, among the less accurate writers upon the subject of Roman history, to confound the senators and patricians together, as always implying the same persons. Plutarch²³ himself, indeed, does not mark out the difference between the two characters with that precision which might be expected from so able a writer. Distinct however they really were, both in their origin and office. The senator was a patrician, and something more: to his hereditary dignity he added an elective one; an honor, therefore, that did not belong to every individual of the patrician order, as of right, but to such only as were thought most deserving of the public confidence.

The mode of election, as instituted by Romulus, has been already described; and there is no reason to think it was ever altered, or

²⁰ Dion. Hal. 2. 12. Grav. O. J. 1. 1. & 3. & 14—25.

²¹ Dion. Hal. 2. 47.

²² "Quæ nisi essent in senibus," says Ci-

cero of them (i. e. "consilium, ratio, sententia), non summum consilium majores nostri appellassent senatum." De Senect. 6.

²³ In Rom. vol. 1. p. 51. edit. Lond. 1729.

taken out of the hands of the people, during the continuance of the regal government. Neither does it appear that the kings, whatever might have been their influence, had any right to interfere in the choice, except only to nominate the president. Under the republic, this general freedom of election, heretofore vested in the people, seems to have undergone a considerable alteration, and to have been laid open to the annual magistrates, from the quæstor²⁴, upwards; who, immediately, upon being invested with their respective offices, took their places in the senate, as a matter of course; and continued in them during the year of their magistracy.

Upon the expiration of that period, they, who were not before in the censor's list, ceased to be complete senators till the next call. This call, however, did not depend entirely upon the arbitrary will of the censors; for some presumptive claim certainly remained ever after in those who had once borne these high offices²⁵; with this material distinction, that such as had been *curule* magistrates had a right to a seat in the house, during the whole interval, and of delivering their opinion in it, though not of voting; but under that

²⁴ Quæstura, primus gradus honoris." Cic. in Ver. 1. 4.

²⁵ This appears sufficiently clear, from what the Roman historian says of those who fell in the field of Cannæ, among whom he enumerates "octoginta præterea aut senatores, aut qui eos magistratus gessissent, unde in senatum legi deberent." Liv. 22. 49.

Aulus Gellius has maintained the same notion, though he has grossly mistaken in the application of it to the persons whom he there means to describe. But, as the following passage evidently points out the actual existence of this distinction, it will be found extremely worthy of our present attention. The author, speaking of those members of the senate, who occasionally gave their votes by passing over to a particular side of

the house, called therefore "Senatores Pedarii," adds, "Videturque eos significare, qui nondum a censoribus in senatum lecti, senatores quidem non erant; sed quia honoribus populi usi quidem erant, in senatum veniebant et sententiæ jus habebant. Nam et curulibus magistratibus functi, qui nondum a censoribus in senatum lecti erant, senatores non erant: et, quia in postremis scripti erant, non rogabantur sententiæ, sed, quas principes dixerant, in eas discedebant. Hoc significabat edictum, quo nunc quoque consules cum senatores in curiam vocant, servandæ consuetudinis causa tralaticio utuntur. Verba edicti hæc sunt: senatores, quibusque in senatu sententiam dicere licet." Aul. Gel. 3. 18.

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degree, none had any business there at all, unless re-admitted by the censors, who were the only officers appointed by the constitution to execute that important trust²⁶, in the ordinary course; as being the general superintendants of the manners of the people, and, consequently, supposed to be the best judges both of the moral and political merits of those who were candidates for that honor.

Upon any extraordinary diminution, by war or other public calamity, a dictator was likewise sometimes created, for the sole purpose of supplying the vacancies. Thus, after the fatal catastrophe of Cannæ, M. Fabius Buteo was nominated for that melancholy occasion; who, in conformity to the constitutional practice, first chose such as had been *curule* magistrates, next those of an inferior degree, and lastly, those who had distinguished themselves by any meritorious services to their country in war; and having added an hundred and seventy-seven new members to the senatorial body, he immediately divested himself of his office, dismissed his lictors, and mixed himself among his fellow-citizens, with the universal approbation of the whole multitude²⁷. In all these cases, however, the ancient right of the people was so far preserved, that this appointment required the confirmation of the centuries, and enrolment by the censors at the "lustrum" next ensuing.

The senatorial office, therefore, being strictly elective, when any senator was degraded or expelled the house, as sometimes happened, he only lost his accidental, not his hereditary, rank: and as all patri-

²⁶ "Quo unò modo," says Val. Maximus of the censorial office, "etiam his, qui jam honores gesserant, aditus in curiam datur." Val. Max. 2. 2. 1.

²⁷ "Recitato vetere senatu, inde primum in demortuorum locum legit, qui post L. Æmilium et C. Flaminium censores, curulem magistratum cepissent, nec dum in senatum lecti essent; ut quisque eorum primus creatus erat. Tum legit, qui ædiles, tribuni plebei quaestoresve fuerant: tum ex iis, qui magistratus non cepissent,

qui spolia ex hoste fixa domi haberent, aut civicam coronam acceperant. Ita centum septuaginta septem cum ingenti approbatione omnium in senatum lectis, extemplo se magistratu abdicavit, privatusque de rostris descendit, lictoribus abire jussis." Liv. 23. 23. This passage is not only curious for the sake of the fact which it relates, but more particularly, as it confirms the truth of the distinction between the aforementioned rights, belonging to the two different orders of magistrates.

cians were not senators, so likewise all senators were not patricians²⁸. As the democracy gained ground, the doors of the senate were opened to virtue and merit, wherever they were to be found²⁹; so that worthy plebeians were often admitted, when unworthy nobles were excluded. Beside the concurrent accounts of the best antient writers, there is still extant a law³⁰ (that will be explained more at large hereafter), wherein the patricians and senators are twice mentioned, as quite different characters; which puts an end to all further doubt concerning the reality of the distinction.

The power of the senate was very great at all times³¹; though it received a vast variety both of extensions and limitations, according to the several species of government respectively prevailing at the different æras of the commonwealth; and the predominancy of one order over the other. In the earlier times, of which we are now treating, the senators were the standing counsellors of the nation³²; consequently no law could pass, nor any public act of the state be laid before the people for confirmation, even by the king himself, till it had been previously considered and approved by the senate³³. In

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²⁸ Rosini Ant. Rom. 1. 17.

²⁹ Thus says the great orator, "Hæc est una via, mihi credite, et laudis, et dignitatis, et honoris: a bonis viris, sapientibus et bene natura constitutis, laudari et diligere: nosse descriptionem civitatis, a majoribus nostris sapientissime constitutam: qui, cum regum potestatem non tulissent, ita magistratus annuos creaverunt, ut confilium senatus reipublicæ proponerent semper: deligerentur autem in id confilium ab universo populo, aditusque in illum summum ordinem omnium civium industria ac virtuti pateret." Cic. pro Sext. 65.

³⁰ I. 1. 2. 4.

³¹ Dion. Hal. 2. 14.

³² Τῇ δὲ συνδρῳ τῆς βουλῆς τιμῇ καὶ δυνά-

τειαν ἀνδρῶν τοιαυτῶν, περὶ πάντος ὅτε αἱ ἐπιτεταται βασιλικῇ, διαγινώσκουσιν τε καὶ ψήφου ἐπιφέρουσιν· καὶ ὁ, τὴν αὐτῇ τοῖς πλεῖστοις, τούτῳ κεῖται." Dion. Hal. 2. 14.

"Senatus reipublicæ custos, præses, propugnator." Cic. pro Sext. 65.

³³ Thus the senator, Minucius, in his address to the Tribunes, vindicates this antient prerogative of his order: Τῇ βουλῇ οἰοῦμαι δὲν ἀρξαι προβαλὺν κατὰ ποιησάμεναι, ὥσπερ ἐγὼ ἡμῶν παλαιοῖς, δυνασθῆναι δὲ αἱ καὶ αὐτοὶ τούτῳ μαρτυροῦν, ὅτι ἐξ οὗ τῆς τῇ πόλει ἐκλήσαν ἡμῶν οἱ προγοροὶ, τούτῳ τοῦ γένους ἐχούσῃ, ἡ βουλὴ διατεταταμένη, καὶ ὅθεν ἀνέστη ὁ δῆμος, ὁ, τὴν μὴ προβαλὺν αὐτοῖς ἡ βουλὴ, οὐτε ἐπιφέρει, οὐτε ἐπιφέρει, οὐχ ὅτι νῦν, ἀλλ' ὅτι ἐπὶ τῇ βασιλείᾳ· τὰ δὲ ἅλλα ὅσα τῇ συνδρῳ δοξῶν, ταῦτα οἱ βασιλεῖς εἰς τοὺς δῆμους ἀφαιροῦντες, ἐπικυροῦν. Dion. Hal. 7. 38.

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like manner the elections of the kings, and other chief magistrates, were to originate in the same body, before they could be ratified by the "comitia". In succeeding ages, indeed, tribunitian insolence would sometimes embarrass these deliberations; but *such* were the constitutional privileges of the senate, which it both enjoyed and exercised in more regular and peaceable times, from its first institution, so long as any vestiges remained of the antient free government.

What has been here said of the senate is chiefly founded upon the authority of Dionysius; though, it must be confessed, that he differs in several particulars from the Roman writers, and, among the rest, from Livy himself, the most celebrated of them all. To speak fairly, the present subject has been an inexhaustible source of controversy among the learned; and yet, after all, every attempt to explain, hath oftener served to render it more obscure. Strange it must certainly appear, that the history of a body so universally celebrated throughout the world, and which, for some centuries, constituted the supreme visible power of the most potent empire that ever gave laws to mankind, should still remain involved in such inextricable perplexities; did we not see many similar difficulties concerning the antiquity and foundations of another assembly, no less venerable than the Roman, many ages more modern, and the due knowledge of which is of infinitely more serious consequence to ourselves.

But the true reason why all over-curious inquirers meet with so little satisfaction in their researches, is, that they look for a great deal more than was ever possible to be found. A very moderate acquaintance with the history of the world will shew, that the pro-

³⁴ "Decreverunt (sc. patres) ut cum populus regem jussisset, id sic ratum esset, si patres auctores fierent: hodieque in legibus magistratibusque rogandis, usurpatur idem jus, vi adempta. Priusquam populus suffragium inerat, in incertum comitiorum

"eventum patres auctores sunt." Liv. 1. 17. Dion. Hal. 2. 57.

Thus again, "Tullum hostilium— regem populus jussit. Patres auctores facti." Liv. 1. 22.

gress of civil government was always so very gradual and imperceptible; and the improvements made in it were so much the effects of mere accident, or occasional emergence; that it is generally beyond the ken of the most acute and discerning eye to penetrate into the darkness, in which the causes and beginnings of it, are almost always enveloped. The founders and lawgivers themselves, being, too often, men of narrow and unenlightened understandings, seldom looked farther than the present temporary occasion that immediately called for the institution. Much less, therefore, could they foresee the many extensive and important consequences of it, which the course of time, and the various combinations of human events, would hereafter produce.

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It should likewise be considered, that the ordinary transactions of civil government do not always make that impression they ought, upon the careless minds of those who are eye-witnesses of them. They pass over, like the other transitory occurrences of the day, as too insignificant to be the objects of historic notice, or as too numerous and complicated to be remembered distinctly; or should some persons of more curiosity and discernment take the pains to collect them for their own use and entertainment, they are apt to be either too proud of the possession of such occult knowledge, to be desirous of making others as wise as themselves; or too negligent in transmitting these valuable treasures to posterity. Sometimes even the very notoriety of facts which all mankind are equally concerned to know, supposes them to be too universally understood, to require any artificial assistance to imprint them upon the mind; till, by the gradual succession of time, and the insensible changes of human affairs, they become obsolete and antiquated, and are consigned, unnoticed, to irretrievable oblivion³⁵. Add to these obvious causes,

³⁵ The obscurities in the primitive constitution of Rome were but too visible, even in the most flourishing æra of the republic; and are accounted for upon similar grounds, by

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causes, the ignorance of letters; the loss of antient records; the deceitfulness of oral tradition³⁶; the defect of authentic materials among the modern historians, or of judgment and precision to make a proper use of such as they have collected; and we shall then give ourselves little concern about those difficulties, which are now so far removed beyond the reach of all possible elucidation. It is sufficient for our present purpose, to have taken this general view of the senate of Rome, as one of the principal *states* of the nation, and one grand source of those laws by which the commonwealth was afterwards governed; referring all further inquiries to the more learned dissertations of historians and antiquaries³⁷.

“*Celeres*.”

Having made these wise and judicious regulations for the better establishment of public order, Romulus lastly turned his thoughts to the majesty of his own office, and the security of his person. To this end he selected a band of youth, the most remarkable for their strength and activity, whom he therefore called “*Celeres*,” and conferred upon them the honor of being his body-guards. These are supposed, by some writers, to have been the original knights, or

by one of the most faithful of the antient historians, who had every opportunity of information, which the remote age wherein he wrote could afford him. *Περὶ δὲ τῆς Ρωμαίων οὐδ' ὅλως εὐχίρης, οὐτὲ περὶ τῶν παρόντων ἐξηγησασθαι, διὰ τὴν ποικίλιν τῆς πολιτείας· οὐτὲ περὶ τοῦ μέλλουσος προσιπεῖν, διὰ τὴν ἀγνοίαν τῶν προγεγονότων περὶ αὐτοῦς ἰδιωμάτων καὶ κινήσιν καὶ ἰδίαι.* Polyb. lib. 6. § 6. edit. Ernesti, Lips. 1764, &c. 8vo.

The celebrated treatise upon the various forms of government, and of the Roman in particular, from whence this passage is selected, is prefixed to the sixth book of this author's history; and has been published separately, by an anonymous editor, at London, 1747; with a very accurate translation, illustrated with several learned notes, and an additional dissertation upon the constitution of the senate.

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³⁶ “*Res vetustate nimia obscuræ, veluti-
que magno ex intervallo loci vix cernun-
tur; tum quod et raræ per eadem tempora
literæ fuere, una custodia fidelis memoriæ
rerum gestarum; et quod etiam si quæ in
commentariis pontificum, aliisque publicis
privatisque erant monumentis, incensa urbe
pleraque interiere.* Liv. 6. 1.

³⁷ Among these ought always to be mentioned, with great respect, an ingenious treatise upon the Roman senate, by the late Dr. Conyers Middleton; to which, together with the other mentioned in the preceeding note, the Author acknowledges his obligations for several very useful hints, relative to this part of his work.

³⁸ Grav. O. J. 1. 2.

*Ἦσαν δὲ περὶ αὐτῶν αἱ τῶν ῥωμαίων καλεσ-
μικοὶ κελίρις, ἀπὸ τῆς περὶ τὰς ὑπεργίας οἰκτερίας.
Plut. in Rom. p. 71.*

“*equites;*”

“ equites ;” though others postpone the creation of *them* to the time of the union of the Romans and Sabines³⁹. But whatever was their beginning, the equestrian order grew, in process of time, extremely powerful. They acquired several privileges and immunities peculiar to themselves; they had a right of wearing a ring of gold, and other ensigns of dignity; their numbers increased till they became indeterminate, and they were allowed to transmit their honors to their posterity. Their military institution was preserved, long after the cause of their first establishment had ceased; for they were laid aside, as guards, immediately upon the accession of Numa (as will be seen presently), and do not appear to have been ever employed by any future kings to their original purpose. They became afterwards a kind of intermediate body between the patricians and plebeians; were a nursery, among several others, both for the senate and the bench of justice; and were relied upon as one great support and bulwark of the state in matters of arms. So much confidence was placed in their valour, that, in the times of the republic, each knight was supplied with a horse by the appointment of the censors, at the public expence: and so numerous were they grown by the breaking out of the Punic wars, that, if any credit be due to the Roman historians, the very rings of those that were slain at the battle of “ Cannæ,” were enough to fill two of their measures⁴⁰, equivalent altogether, as some imagine, to three English gallons⁴¹.

Such was the state of infant Rome, destined hereafter to be the mistress of the universe; to govern it not only by her living authority, but to extend the influence of her laws far beyond the limits of her temporal existence.

³⁹ Hooke's Rom. Hist. b. 1. c. 2. § 6. ⁴⁰ “ Modii.”
note (a).. ⁴¹ Hooke, 4. 21.

THE HISTORY OF THE

CHAP. II.

*Numa—His peaceable Regulations—"Pagi"—"Collegia"—
"Feciales"—Religious Institutions.*

BOOK I.
Numa.

THE jealousies and seditions, which ensued upon the sudden disappearance of Romulus, would have been fatal to the being of this rising commonwealth, had not its better genius directed the eye of the whole people towards Numa. A prince, torn thus reluctantly from the bosom of tranquillity and philosophy, and who submitted to the crown, rather as a burden which his duty forbade him to decline, than as an honor which his ambition importuned him to accept, could not but entertain very different ideas of the great importance of the kingly office, from those of his restless and warlike predecessor.

The first outline of the constitution, as drawn by Romulus, though very plain and simple, was not less sensible and liberal, and deservedly intitled him to the honorable name of Founder. But from one, whose reign was a continued scene of war and violence, a formal code of laws, for the uses of private and domestic life, was an effort of the understanding not then to be expected. His subjects, of the same military cast with himself, were much more intent upon invading the property of their neighbours, than of quarrelling about their own.

To soften the manners of this rude and unpolished soldiery; to subdue their obstinate and ferocious passion for arms; to persuade them that the paths of peace and civilization lead to much more certain and substantial happiness, than those of victory and false glory, was a task that might have staggered the resolution of Hercules.

cules. But however difficult it was in appearance, Numa had the courage to encounter, and the fortune to accomplish, it.

C H A P.
II.

He began his reformation by dismissing the "céleres," from the guard of his person; assigning for a reason, "that it would ill become him to reign over a people whom he distrusted, and as ill to distrust a people who compelled him to reign over them". His next great object was, to encourage the population of this young colony, and to prevent its diminution by the ravages of the sword. But at the same time, to make his people hardy and laborious, and to keep them from growing effeminate by too long a succession of peace, he distributed among them the conquered and vacant lands, dividing them into "Pagi," or villages; and placing over each a superintendant, to prevail with them, by every motive both of reward and punishment, to improve the arts of agriculture; and to give new life to their industry, he himself frequently condescended to be their overseer. In consequence of this wise policy, the functions both of peace and war were usually discharged by the same person. The husbandman, the magistrate, and the soldier, became the mutual ornament of each other's profession; the unpolished rustic stepped at once from the plough to the consulship, or to the head of the army²; and having finished the campaign, with equal honor to himself and benefit to his country, descended, in modest dignity, from the splendid car of triumph; returning, in all content and humility, to the peaceful cares of a rural and sequestered life³.

Another regulation, admired by his biographer as one of the wisest strokes of policy of Numa's whole reign, was the separa-

¹ Οὐτε γὰρ ἀπιστεῖν πιστεύουσιν, οὐτε βασιλευσιν, ἀπιστοῦνται ἑξίου. Plut. in Numā, p. 139.

² Thus Cicero describes the plain manners of the primitive ages, "Ab aratro arcescebantur, qui consules fierent;" and again, "Apud majores nostros, summi viri, clarissimique homines, qui omni

" tempore ad gubernacula reipublicæ federe debebant, tamen in agris quoque colendis aliquantum operæ, temporisque consumpserint." Pro Rosc. Amer. 18.

³ " Expeditione finita, rediit ad boves rursus triumphalis agricola." Luc. Flor. 1. 11.

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I.

tion of all the artizans and tradesmen of Rome into particular companies, according to their respective employments. For as the people adhered too much to their antient distinctions of Romans and Sabines, which was the source of infinite discords, his knowledge of human nature suggested to him, that by mixing them all together, by the tie of their own private and particular interests, he should soon efface the memory of their different origins; in which his judgment was not deceived. These companies were called by the Romans, "Collegia"; they subsisted ever after upon their original foundations; and were, most probably, the archetypes of those similar communities, now so numerous in this, and other modern trading nations.

"Feciales." The "Feciales," likewise, an institution of great consequence in the law of nations at large, have the honor of claiming Numa for their founder. These were a college of military priests, whose office it was to adjust the differences between their own and foreign states, and not to permit the Romans to declare war, till all hopes of accommodation were at an end⁴.

Religious institutions.

But this pious and excellent prince was, above all things, attentive to the regulation of religious rites and ceremonies; for he well knew that nothing could so effectually overcome the fierceness of uncultivated nature, as the dread of a supreme almighty Being⁵. He is supposed likewise to have had some knowledge of the Jewish religion and constitution, from a similitude of his laws to some very peculiar ones of that select people⁷. Such as those which enjoin a

⁴ By the Greeks Κοινωνίαι. Plut. ibid. p. 155.

⁵ For which reason they are called by Plutarch Ειρηνοφυλάκται. In Numa, p. 147. By Dionysius, Ειρηνοδίκται. 2. 72.

⁶ "Numa religionibus et divino jure populum devinxit." Tac. Ann. 3. 26.

⁷ Οὕτω μεταίων και τετραχυμένον δήμον ου μικρὴς οὐδ. φανλῆς σιμνος ἵσταν πτοχματιζας μεταχειρισσασθαι και μεταποσμησαι πρὸς εἰρήνην, ηγχατο τετ απο των θειων βουθαιαν. Plut. in Num. 140.

⁷ Selden de J. N. & G. 1. 2.

kind of sabbatical cessation from labor on holidays⁸; and others, C H A^r P.
II. more particularly, that forbid the worship of images. And these latter especially were so strictly observed, that Plutarch and other credible historians have remarked, that, for the space of an hundred and seventy years after these laws were enacted, idolatry was unknown in Rome. An attempt to express the august ideas of an invisible and spiritual Being by such gross and vulgar representations, was then esteemed a most heinous act of impiety; for, according to the opinion he then held, "it was impossible to form any conception of the Deity, but in the understanding". Notions of great purity and refinement for such unenlightened times! It is likewise worth remarking, that, even after the revival and increase of idolatry, the profound veneration paid to their gods, though superstition at best, contributed, more than any other cause, to keep alive that high sense of honor and justice, for which the Romans were so deservedly famous for many centuries, till the latter days of politeness, luxury, and corruption; when religion, and, of course, moral virtue, were swallowed up in Stoical fatalism, and Epicurean insensibility.

A system of policy founded upon principles so wise and benevolent, not only insured happiness and tranquillity to the Roman people at home, but imparted a considerable share of the same blessings to all the neighbouring states. So powerful were its effects,

⁸ The words of Plutarch are very remarkable, *οτι ο Νεμης χρηται της πολιτας μητι ακριβη τι των θεων μητι οραν ει παριργη και αμειλις, αλλα σχολην αγωγας απο των αλλων, και προσι-
χοντας την διαισιναι ως πραξει μεγαλη τη περι της
ιυστηρας, φοβην τε και παταγων και γιναγμων,
και οσα τοιαυτα τας αναγκαιους και βαναυσους ποιους
ισμεται, καθαρας τας οδους ταις ιεραρχιας παρι-
χοντας.* Ib. p. 150.

⁹ *Ετι δε και τα περι των αφιδρυματων νομοθετι-
ματα παλαιασιιν αδιλφα των Πυθαγορευ δαγματων ετι*

*γαρ εκεινος αισθητοι η παθητοι, αορατοι δε και ακηρατοι
και ιοντοι υπελαμβαιναι ειναι το πρωτοι. υτος δε δικω-
λυσιν ανθρωποειδη και ζωομορφοι εικονα Θεω Ρωμαιοις
νομιζιν. υδ' ην παρ' αυτοις ετι γραπτοι, εις πλαστον ειδος
Θεω προτεροι, αλλ' εκατοι εβδωμηκοντα τοις πρωτοις
ιτωσι ιανθς μιν οικοδομημενοι διτελιν' και καλε-
αδας ιερας ιεωνης, αγαλμα δε υδιν εμμορφοι ποιη-
μενοι διτελιν' ως ετι οσιν αφομοιων τα βελιουσα
τοις χειροσιν, ετι εφαιπισθαι Θεω δυνατον αλλως η
νοησει.* Ib. p. 141.

B O O K
I.

that, during the whole reign of Numa, “there was neither war, in-
“urrection, nor any attempt either against his person or govern-
“ment. His subjects, grown prudent by their prince’s example,
“required neither force nor threats to incline them to their duty;
“but led a quiet and irreproachable life, in concord, justice, and
“temperance; the most desirable crisis at which human beings can
“ever hope to arrive. That man, therefore,” continues the biogra-
“pher, “is the most deserving of a throne, who has the art of inspir-
“ing his subjects with such virtuous inclinations, and of conducting
“them to so perfect a state of political happiness.”

C H A P. III.

*Successors of Numa to Servius Tullius—Alterations made by Servius—
Increase of the Tribes—Classes—Centuries—“Comitia”—“Cen-
“fus”—Tyranny and Expulsion of Tarquin.*

Successors of
Numa, to

FROM the time of Numa, few changes were made in the laws
and civil constitution of Rome, till the reign of Servius Tullius.
His three immediate predecessors, either from inclination or necessity,
were embroiled in perpetual contests with their hostile neighbours;
and therefore, however well disposed, had no leisure to think of
improving the legal system, or of correcting any of its original defects.
The only alterations worthy of notice were, that Tullius Hostilius¹,

¹⁰ Ουτε πολέμος, ουτε πικτερισμος περι πολιτιαν
ισορηται, Νυμα βασιλευντος. η μην υδε επ’ αυτοι
εκεινοι εχθρα τις, η φθορος, η δι’ ερωτα βασιλειας
επιβουλη και συσασις ανδρων.—ταχα γαρ ουδε αναγ-
κης τιος διε προς της πολλης, ουδε απειλης αυτοι δε
την αρετην εν ευδηλω παραδειγματι και λαμπρη τη
βιω τε αρχολος δρητης, εκουσιως σωφρωνεσι, και συσ-
χηματιζονται προς τοις εν φιλια και δμουσια τη προς
αυτης, μιλα δικαιοσυνης και μετριηλης, αμυμονα
και μακαριον βιοι, εν η το καλλιστον απασης βοηθειας
τελος εστι και βασιλικωτατος απαλιον ο τυτον τοι βιοι

και ταυτην την διαδοσιν τοις υπηκοοις περιγασσασθαι
δυναμους. Plut. in Numa, p. 159.

¹ “Reperta quædam a Tullo et Anco,”
says Tacitus (Ann. 3. 26.); but whatever
they were, no traces are now to be discovered
of them. Thus says Tullus to the Albans,
Το μιν αλλο πλεθους υμων μετα των παρ ημιν δτιμα-
τικων συντελειν εις φυλας και φρατρας καταμερισθην,
βουλης δε μετεχων και αρχας λαμβανων τυσδε τους
οικους, Ιαλιους, Σερυιλιους, Γεγαυους, Μετιλιους, Κορατιους,
Κοιντιλιους, Κλοιλιους. Dion. Hal. 3. 29.

on

on the conquest of Alba, incorporated a few of the Alban families into the senate, not indeed to increase the number, but only to supply the vacancies²; and that Tarquinius Priscus, to conciliate the favor of the people, added an hundred more, out of the plebeian families, so as to make the whole number three hundred³.

C H A P.
III.

The accession of Servius sowed the seeds of that democratical spirit, which, in time, animated the whole body of this mighty people; and, according to the different purposes to which it was afterwards applied, became the cause, either of the glory and prosperity, or of the disgrace and ruin, of the republic. He is charged with having totally altered the fundamental principles of the constitution, by accepting the crown from the commons alone, whose power had heretofore extended no further, than to the ratification of the choice which had been previously made by the senate⁴.

Servius Tullius.

To express his apprehension of the great danger of intrusting the administration of the sovereign power to the precarious will of a single person, he enacted laws which were to be equally binding upon the king, as upon the subject⁵; and he even went so far, as to meditate the resignation of his crown, and the introduction of a popular government⁶. These checks upon aristocratical licence so exasperated

² Dion. Hal. 3. 29.

³ Εὐδὺς ἅμα τῷ παραλαβῆναι τὴν ἀρχὴν, τοὶ δημοτικοὶ οὐλοὶ οἰκίῳ ποιηταὶ προδυμνηδίας, ὥσπερ οἱ προτεροὶ βασιλεῖς ἐποίησαν, διὰ τοιαύτης ἐνέργειας ὑπεργαγίῳ. ἐκλεξάς ἀνδρας ἑκατὸν ἐκ πάντων τῶν δημοτικῶν, οὓς ἀρετῇ τινι πολυμικῇ ἢ πολυτικῇ, φροσίνῃ ἀπαλὲς ἐμαρτυρῶν, πατρικίως ἐποίησεν, καὶ κατέταξεν εἰς τοὺς τῶν βουλευτῶν ἀριθμὸν. καὶ τότε πρῶτον ἐγένοντο Ῥωμαῖοι τριακοσιοὶ βουλευταί, τινὲς οὖν διακοσιοί. Dion. Hal. 3. 67.

⁴ Τὴν τοῦ ἀνδρα λεγούσι Ῥωμαῖοι πρῶτον τὰ παλῖα ἐθεὶ καὶ νόμιμα κινήσαι, τὴν ἀρχὴν λαβόντα ἔπαρτα τῆς βουλῆς καὶ τῷ δήμῳ, καθάπερ οἱ πρὸ αὐτοῦ

πάντες, ἀλλὰ παρὰ μόνῳ τῷ δήμῳ, δικασμοῖς καὶ δημοδοκίαις, καὶ ἀλλαῖς πολλαῖς κολακίαις ἐκδίδεσκον τὰς ἀπορίας καὶ ἐχθρὰς τῶν ἀλλήλων. Dion. Hal. 4. 40.

⁵ “Præcipuus Servius Tullius sanctorum legum fuit, quæis etiam reges obtemperaverint.” Tac. Ann. 3. 26.

⁶ “Idipsum tam mite ac tam moderatum imperium, tamen quia unus esset, deponere eum in animo habuisse, quidam auctores sunt, ni scelus intestinum liberandæ patriæ confilia agitantibus intervenisset.” Liv. 1. 48. Dion. Hal. 4. 8, 9, 10. 12.

B O O K the patricians, that they are said to have joined in the conspiracy
 I. with Tarquin, to dethrone and murder him⁷.

But whatever truth may have been in these suggestions, his general conduct certainly reflected the brightest lustre upon his royal station. Though by birth a slave, he possessed all the united accomplishments both of Romulus and Numa; by his valour he became the terror of his enemies, and by his wisdom and moderation, the darling of his subjects. The first objects of his attention were the poor and oppressed. He restrained the power of usurers over the persons of their insolvent debtors, thinking it sufficient to give the creditors a security upon the goods alone. He proportioned the public taxes and contributions to the different ranks and fortunes of the people; and having deprived all such as had obtained possession of the conquered lands by any acts of injustice, he distributed them among the destitute; it being his opinion, that generous sentiments could never dwell with those, who were in want of the daily means of subsistence. But, above all, he was particularly solicitous that justice should be impartially administered, and the blessings of a free constitution be equally secured to every individual of the community⁸.

Increase of
the Tribes.

The people being, by this time, considerably increased, Servius found it necessary to enlarge the bounds of the city, by taking in two more hills, and to add one more tribe to those already instituted by Romulus⁹. That the inhabitants likewise of the country round Rome might partake of the same advantages with their fellow-subjects, he distributed them into tribes, upon a similar plan with those within the walls. Critics and antiquaries are much divided about the precise number thus established¹⁰, but that is a question of no consequence at present. It is sufficient only to observe, that, by various augmentations, they rose to thirty-five, which they never afterwards exceeded; and that, from their respective situations, they were distinguished by the

⁷ Καὶ ἐπὶ ταύτῃ μάλιστα λέγεται τῇ αὐτῇ τῶν πατρικίων αὐτῶ τῆς συνεπιθυμίας. Dion. Hal. 4. 40.

⁸ Dion. Hal. 4. 11.

⁹ Ib. 4. 15.

¹⁰ Hooke, 1 7. 3. note (b).

titles of "Urbanæ" and "Rusticæ." Each had its peculiar name, taken either from the place of its settlement, or from some great family, which had been originally the head of it.

C H A P.
III.

The number of "curiæ" was not augmented together with the tribes; so that they always continued in the same state as when first instituted by Romulus; were confined to their primitive situation in the old city; and in a few ages lost all their consequence. They were convened only out of ceremony, and in compliment to their antiquity, to add greater solemnity to some particular acts of the other "comitia," chiefly in matters of religion¹¹; and even then the individual members did not assemble in a body, but were represented only by thirty lictors¹². The "comitia tributa" were, originally and properly, the assembly of the commons alone. In them were made the elections of several magistrates of the inferior sort, and such laws as concerned their own particular order, well known by the name of "Plebiscita".

But the most material alteration introduced by this politic monarch, was the new division of the people into Classes and Centuries¹³. Every citizen was hitherto subject to a kind of capitation tax, which was levied equally upon the poor and the rich; they were all obliged likewise, without distinction, to serve in the field at their own expence. To relieve them from so heavy a burden, Servius directed the heads of every family, under the severest penalties, to deliver in upon oath an exact account of their whole effects and fortune. Having thus obtained a particular information of the circumstances of all his subjects, he separated them into six classes, in proportion to the value of their respective estates, and taxed them all according to their several abilities.

¹¹ "Curiata tantum auspiorum causâ
"remanferunt." Cic. pro Leg. Agr. 2.

¹² Grav. O. J. 1. 10. 28. Cic. pro Leg. Agr. 2. 12.

11.

¹³ Grav. O. J. 1. 28.

¹⁴ Dion. Hal. 4. 16—21.

By

By the constitution of the "comitia curiata," the vote of every citizen was of equal weight; consequently the balance of power inclined too much in favor of the poor and ignorant, who were less able to understand the principles of government, and more exposed to prejudice and corruption, than the better educated and wealthier nobility. To obviate this inconvenience, Servius subdivided the six classes above mentioned, into an hundred and ninety-three centuries¹⁵. The first class comprehended the patricians, knights, and all the richest citizens, and contained ninety-eight centuries. The second consisted of the tradesmen and mechanics, and had twenty-two. The third, the same number. The fourth, twenty. The fifth, thirty. The sixth took in all the poorer sort of every denomination, who constituted altogether no more than one century; though, to make them some amends for the loss of their political consequence, they were indulged with an exemption from military service, except in cases of tumult and imminent danger; and were reserved, principally, for the more peaceable employment of increasing population; from whence they obtained the title of Proletarians¹⁶.

From this period the "comitia centuriata" assumed to themselves the whole majesty of the Roman people, which before had resided in the "comitia curiata." They became the states-general of the

¹⁵ Grav. O. J. I. 11.

¹⁶ "Qui in plebe Romana tenuissimi pauperisque erant, neque amplius quam mille quingentum æris in censum deferabant, *Proletarii* appellati sunt.—Sed quoniam res pecuniaque familiaris obsidis vicem pignorisque esse apud rempublicam videbatur; amorisque in patriam fides quædam in ea firmamentumque erat; neque proletarii neque capite-censi milites, nisi in tumultu maximo, scribebantur; quia familia pecuniaque his aut tenuis aut nulla esset. Proletariorum tamen ordo ho-

nestior aliquanto et re et nomine, quam capite-censorum fuit; nam et asperis reipublicæ temporibus, cum juventutis inopiæ esset, in militiam tumultuariam legebantur; armaque iis sumptu publico præbebantur; et non capite-censione, sed propereiore vocabulo a munere officioque prolis edendæ appellati sunt. Quod, cum re familiari parva minus possent rempublicam juvare, sobolis tamen gignendæ copia civitatem frequentarent." Aul. Gell. 16.

10.

nation; and no laws ("leges," properly so called) could be enacted, unless by virtue of their supreme authority. But as the antient modes of voting in the "comitia" were still observed, the centuries of the rich were so very numerous, that if those of the first class happened to be all of the same mind, they were of themselves a majority of the whole, and decided the question without calling in the rest¹⁸. The higher classes, however, were, in general, so well agreed, that it seldom happened that more than the three first ever came to vote at all¹⁹. Thus did the nobility, and the richer part of the citizens, obtain a very ample recompence for the many additional burdens they were now obliged to bear; and the poor were but little affected by the loss of that power, the use of which they did not understand; especially as they had exchanged it for the more substantial comforts of a release from taxes, and other expensive services. This change, however, beneficial as it really was to the fortunes of the poor, laid the foundation of that aristocratical power, which fell so heavily upon the commons, during the early ages of the consular government.

C H A P.
III.

To preserve the spirit of this institution, and to prevent the rich and poor from being any more blended together in the same class, Servius directed, that a new estimate of each man's estate should be taken every fifth year. This was called a "Census;" and was concluded with a solemn lustration, or expiatory sacrifice, for the whole people; from which custom, this time of five years was ever after described by the word "Lustrum"²⁰. The ceremony was, at first, performed

A. U. C.
311.

The first time that the "proletarii" were intrusted with arms, was on the occasion of the invasion of Pyrrhus: "Nam et eo primum tempore, quum tanta undique belli mole coorta, imperium pluribus exercitibus defendi oporteret, proletarii, quibus antiquitus vacatio militiæ fuerat, sacramento rogari ceperunt. Arma, quæ parare

"per inopiam non poterant, publicè data." Liv. 12. 22.

¹⁸ Ros. Ant. Rom. 6. 14.

¹⁹ For a more particular and satisfactory account of these matters, I would refer the reader to Hooke's Rom. Hist. 1. 7. and note (a).

²⁰ Thus Horace, having completed his fortieth year, desires his friend X. Phocæus not

BOOK

I.

performed by the kings, afterwards by the consuls; but as the latter were generally engaged in wars, and were little at leisure to attend to the affairs of peace, two other officers were created for this particular purpose. The censorship, though not the highest, was esteemed one of the most important offices in the whole state; and was conferred upon such only as were distinguished above the rest by their piety, gravity, and severity of life²¹.

The censors being invested with the power of inquiring minutely into the circumstances of every individual citizen; if any one were found declined in fortune, if a senator, he was degraded into an equestrian; if an equestrian, into a plebeian; and so downward, to the lowest degree of that order²². The rank was forfeited, in like manner, for a scandalous course of life. The offending plebeian, who had not far to fall, was deprived of the right of suffrage, removed from his tribe, and turned over "in Cæritum tabulas²³." From this mark of infamy he was called "Ærarius," and "Capite-census," as retaining the rank of citizen in nothing else than the burden of it, that is, the payment of tribute. As the censors had the power of degrading, so likewise had they that of restoring to the lost ranks, either upon the improvement of the fortune, or the amendment of the manners; a power, when judiciously and impartially executed, of great use in encouraging both æconomical and moral virtue. But the whole exercise of it was liable to the judgment of the people, and controllable by the tribunes²⁴.

to be jealous of the praises he (the poet) had bestowed upon his mistress, because he was past the age of gallantry:

— fuge suspicari,

Cujus octavum trepidavit ætas

Claudere lustrum. Od. 2. 4.

Dion. Hal. 4. 15. Liv. 1. 42, 43, 44.
Grav. O. J. 1. 8. D. 1. 2. 2. 17. & Muel.
ibid.

²¹ Liv. 4. 8.

²² Grav. O. J. 1. 3. et 8. To this He-

race alludes, Ep. 1. 1. 57.

"Si quadringentis sex septem millia defunt,
"Plebs eris."

²³ Cære was a municipal town of Italy, which had incurred this punishment, for a revolt. A. Gell. 16. 13. Horace, therefore, speaking of certain abandoned people, calls them

"Cærite cerâ

"Digni." Ep. 1. 6. 62.

²⁴ Liv. 45. 15.

Thus

Thus cherished by the paternal care and vigilance of these mild princes, the Roman State daily acquired new vigor and stability; and became an object of respect, as well as of dread, to the whole continent of Italy ²⁵.

C H A P.
III.

But the happy effects of this excellent policy were at last defeated by Tarquin the Second, deservedly stigmatized by the odious surname of the Proud. This execrable parricide, having usurped the throne without the consent either of the senate or people, thought himself at full liberty to set law and humanity at open defiance; to destroy the free spirit of the constitution; and to insult, at pleasure, over the miseries of his afflicted country ²⁶. But it is an eternal truth, that a tyrant can have no enemy greater than himself ²⁷. A people nursed in the arms of liberty, who in their king had been always used to revere their parent, could not feel with patience the iron hand of the oppressor. The memorable outrage, therefore, committed by his flagitious son upon the virtuous Lucretia, easily roused the spirit of the whole nation, already inflamed with resentment, and ripe for revolt; and gave birth to a republican government, the most wonderful and illustrious, that ever appeared in the history of the universe ²⁸.

Tarquinus
Superbus.

Fortunate, however, as this event really was in itself, considered as a deliverance from one accidental tyrant; yet the anarchy and

²⁵ "Priores (sc. reges) ita regnarunt, ut
"haud immerito omnes deinceps conditores
"partium captæ urbis, quas novas ipsi sedes
"ab se auctæ multitudini addiderunt, nume-
"rentur." Liv. 2. 1.

²⁶ "Ουτος ὑπερίδων μὲν τὴν πόλιν, τὴν δὲ δημοτικὴν
ὑπερίδων δὲ τὴν πατριαν, ὅφ' ἂν ἐπὶ τὴν δυναστείαν
πρόσχηθῃ, ἔδῃ τε καὶ νόμους καὶ πάντα τοὺς ἐπιχωρίους
νόμους, ὃ τὴν πόλιν ἐκστρέψαι οἱ πρὸ αὐτοῦ βασιλεῖς,
συγκρίας καὶ διαφθάραι, οἷς ὁμολογῶμεν τυραννίδα
μετέσσει τὴν ἀρχήν. Dion. Hal. 4. 41.

²⁷ Sallust has made some very fine obser-

uations on the miserable state of a tyrannical ruler, very applicable to the present subject. Ad Cæs. de rep. ord. Ep. 2. "Equidem ego
"cuncta imperia crudelia magis acerba,
"quam diuturna, arbitror, neque quemquam
"a multis metuendum esse, quin ad eum ex
"multis formido recidat: eam vitam bellum
"æternum atque anceps gerere; quoniam
"neque adversus, neque ab tergo, aut late-
"ribus tutus sis: semper in periculo, aut
"metu agites."

²⁸ Dion. Hal. 4. 64.—ad fin.

BOOK

I.

confusion which immediately ensued, was a very poor exchange for the tranquillity they enjoyed, under their primitive kingly government. In those golden days, when the people were kept in subjection by the influence of manners, rather than by the dint of authority; where a happy mediocrity, both of fortune and desires, prevailed universally through all orders and ranks of the state; each enjoyed his lot in content and security. Wealth, luxury, and ambition, the certain sources of licentiousness, vice, and disorder, had not then invaded their innocent mansions. The laws were few, many being unnecessary; and they were obeyed with cheerfulness, because in their obedience the people saw their interest.

Livy, therefore, justly observes²⁹, that, “ Had another Brutus wrested the scepter out of the hands of any of the former kings, it must have been fatal to the very being of the state. For what evils would not have arisen from a tumultuous rabble of shepherds and refugees, who had obtained liberty, or rather impunity, under the inviolable sanctuary of a temple; when uncontrolled by regal authority; agitated by the storms of tribunitian fury; and engaged in contests with the patricians in a strange city; before the pledges of wives and children, and an affection for the soil itself, to which time only could reconcile them, had cordially united their minds? Discord would have totally dissolved their infant state, which the mild hand of regal govern-

²⁹ “ Neque ambigitur, quin Brutus idem, qui tantum gloriæ, Superbo exacto rege, meruit, pessimo publico id facturus fuerit, si libertatis immaturæ cupidine priorum regum alicui regnum extorsisset. Quid enim futurum fuit, si illa pastorum convenerumque plebs transfuga ex suis populis, sub tutela inviolati templi, aut libertatem, aut certe impunitatem adeptæ, soluta regio metu, agitari cæpta est tribunitiis pro-

cellis? Et in aliæna urbe cum patribus ferere certamina, priusquam pignora conjugum ac liberorum, caritasque ipsius soli, cui longo tempore assuescitur, animos eorum confociasset? Dissipatæ res, nondum adultæ, discordia forènt: quas fovit tranquillæ moderatio imperii, eoque nutriendo perduxit, ut bonam frugem libertatis maturis jam viribus ferre possent.” Liv. 2. 1.

“ ment carefully cherished, and gradually brought to such a per-
“ fection of strength and maturity, that they were well prepared
“ to support so violent a convulsion; and to enjoy, with ease, the full
“ harvest of liberty.”

C H A P.
III.

Great revolutions, however fortunate in their consequences, are oftener the effects of some sudden and violent provocation, than of any cool and premeditated design. The authors themselves cannot foresee how far they may be transported, either by their interests or passions; or by what hasty strides they may go on, from the punishment of a tyrant, to the reformation of a state. They seldom think of redressing a public evil, till driven to it by some personal feeling of their own. But the ways of man are in the hands of God. His daily providence directeth the various occurrences in the world to many great, beneficial ends, far beyond the reach of human foresight; and maketh the selfish views of a few narrow-minded individuals subservient to the welfare of society at large.— An observation that is fully verified, by the interesting events of the ensuing period.

THE
HISTORY
OF THE
LEGAL POLITY of the ROMAN STATE;
AND OF THE
RISE, PROGRESS, and EXTENT
OF THE
ROMAN LAWS.

BOOK II.

The Consular or Republican Government, to the Time
when Julius Cæsar, having passed the Rubicon, became
sole Master of Rome, and of all Italy.

CHAP. I.

*Creation of the Consuls.—“Jus civile Papyrianum.”—Popular Se-
ditions.—Tribunes.*

BRUTUS has been held up to all following ages, as a con-
summate model of genuine patriotism; yet it was a sudden
accident only that called forth his virtues into action, and made him
the

BOOK II.
CHAP. I.
Second Pe-
riod.

BOOK
II.

the fortunate instrument of his country's deliverance. If we look back upon this inflexible adversary to the regal office, during the earlier part of his time, and till the present critical moment; we shall see him submitting, in silent and fullen patience, to an uninterrupted course of the most cruel and mortifying indignities, for the tedious space of twenty-five years; and condescending to preserve a comfortless life of humiliation and ignominy, by an affected renunciation of the use of his understanding. Even at last, had not Lucretia been violated, Rome, perhaps, had never been free. But vengeance was now gone forth. Tarquin was destined to expiate the crimes of a long reign; and because the tyrant had justly drawn upon his own head the whole weight of the national resentment, the king, as unjustly, was for ever to be degraded from the throne. To effect these fundamental changes in the political system, the concurrence of the people was necessary,—and *liberty* was the word¹: yet, among the many new schemes of government at first proposed, that only, which favored the interest of the aristocratical party, met with any cordial encouragement. The democratical form, which succeeded in its turn, arose from a new series of provocations on the part of the nobles; and from an accidental combination of other unforeseen events.

It is evident, from the histories of those times², that the king had long been an object of envy and jealousy to the patricians. They were justly suspected of the murder of Romulus himself; and, after his death, they were very unwilling to proceed to the election of a successor, till forced into it by the clamors of the people³. Neither

¹ Thus Brutus, in his speech upon the death of Lucretia, gives the following advice:

Επιτα των αλλων ικατος παρων κατηγορειτω της τυρανιδος, και της πολλης επι την ελευθεριαν παρακαλειτω. ισαι δε πασι Ρωμαιοις κατ' ευχην ιαν ιδωσιν εμας της πατρικης αρχης της ελευθεριας; πολλα

γαρ και δυνα αποδασιν υπο το Ταρκυν, και μικρας αφερμης δυνται. Dion. Hal. 4. 71.

² Dion. Hal. 2. 56—58.

³ Fremere deinde plebs, multiplicatam servitutem, centum pro uno dominos factos; nec ultra nisi regem, et ab ipsis creatum, videbantur passuri. Liv. 1. 17.

could

could they conceal their peevish discontent, even under the mild reign of the patriotic Servius. Their pride was particularly offended at the privileges which that humane prince granted to the manumitted slaves⁴, and the strong attachment he always shewed to the plebeian interest⁵. The deposition of a Tarquin was certainly a meritorious effort of true heroism, and would have been still more honorable to its authors, had the tenor of their future conduct corresponded with their first professions. But it soon appeared, that they hated monarchy, only because their own shoulders were galled with its weight; and that they valued the blessing of liberty much more for the sake of enjoying it themselves, than of imparting it to others. Though the inferior members of the community had exerted an equal zeal for the same glorious cause⁶, their only rewards were insult, contempt, and oppression.

In compliment, however, to the established principles of the ancient constitution, the "curiæ" were now assembled in due form; and the new deliverers had the art, by their animated and pathetic harangues, to work upon the passions of the populace to so violent a degree, as to render the very name of king, heretofore so deservedly revered, the object of universal abhorrence and detestation; and to obtain the abolition of it for ever, as a title of magistracy. From henceforth, therefore, it was appropriated only to a particular officer, whose duty it was to superintend certain religious rites and ceremonies, which were before performed by the king in person⁷.

⁴ Dion. Hal. 4. 22, 23.

⁵ Ibid. 4. 40.

⁶ Ταρκύνιος—ἐπιθροῦν αὐτῶν τῶν πατρικίων, καὶ τοῦ δήμου συμφρονησάτος, ἐξέπαιε τῆς δυναστείας. Dion. Hal. 4. 63.

⁷ "Quia quædam publica sacra per ipsos reges factitata erant, nec ubi regum defierum esset, regem sacrificulum creant."

Liv. 2. 2. Thus Brutus, ἵνα δὲ καὶ τύνομα τῆς βασιλικῆς ἐξουσίας πατριῶν ὑπέρχοι ἡμῶν, καὶ οὐν οἰοῖτο αἰσίου διὰ τὴν ἐπικυρωσάμεν πατριάρχου καὶ τῶν πολλῶν, αὐτῆς ἵνα τῆς ἰσχυρῆς φυλατῆται ἱερῶν, ἀποδεικνύσθαι τὴν αἰ βασιλείαν, ὃ τὴν τιμὴν ταύτην ἔχει διὰ βίαν, πᾶσις ἀπολυομένης πολυμικρῆς ἀσχολίας, τὸ το μόνον ἔχει ἔργον, ὡς περὶ ὁ βασιλεὺς, τῶν δυσκολῶν, ἀλλὰ δὲ οὐδὲν. Dion. Hal. 4. 74.

BOOK
II.
Consuls.

To supply the place of the deposed monarch, two other magistrates were substituted, with the less invidious name of Consuls². The power was thus cautiously divided between two, that they might be a check upon each other; and the duration of it limited to one year, lest they should have time to form parties in the state, and perpetuate a new system of tyranny in themselves and successors³.

The short-sighted commonalty were easily captivated with this new and enchanting scene of policy, so specious, liberal and moderate on its first appearance. They fondly imagined, that their ancient liberty would arise, with renewed vigor, from the ashes of extinct monarchy. But as their passions began to cool, and they had leisure to reflect upon the consequences of this momentous revolution, they then found, to their sore mortification, that the chains of the nobles were as heavy and oppressive as those of the king; and, in the room of one formidable monster of power over the whole city, were alarmed with the view of a number of petty tyrants, who had started up in every quarter.

The oath, therefore, that Brutus imposed upon the assembly, never to suffer another king to reign in Rome, was, in effect, little better than mere parade. It served indeed to calm the fears, and appease the murmurs, of a simple and ignorant populace, with the charms of a new system, but not to enlarge the circle of general liberty. The annual change of the consuls was of use, in alleviating the dread of hereditary despotism; but it gave the

² So called, says Pomponius, (D. 1. 2. 2. 16.) "bento, nemini parento. Ollis salus populi
"Quia reipublicæ consulunt."—Προβουλους. "suprema lex esto." De LL. 3. 3.
Dion. Hal. 4. 74. & 5. 1. But the duties of The two first were L. Junius Brutus, and
their office are much better defined by Cicero L. Tarquinius Collatinus. Liv. 1. 60. & 2. 1.
in the following passage: "Regio imperio
"duo sunt: iique præeundo, judicando, ³ The principles upon which the consular
"consulendo, prætores, judices, consules government was meant to be founded, are
"appellantor. Militiæ summum jus ha- well explained in the speech of Brutus. Dion.
Hal. 4. 73, &c.

patricians

patricians a still fairer opportunity of being all tyrants in their turn. The "comitia" were indulged with the right of electing these, as well as all other, magistrates¹⁰; but the influence of the higher ranks in the elections greatly diminished the value of that privilege.

C H A P:
I.

The consuls were not only invested with all the external splendor of the regal office, but with the actual plenitude of the regal power; and all this, at the express motion of Brutus himself¹¹. In virtue of these concessions, they not only claimed a general precedence, but likewise a right of controul and coercion, over all the other great officers, the tribunes only excepted¹². They were the supreme judges in all causes, criminal and civil; had the administration of the public revenue; convened, and presided over, the senate; proposed the subject of debate, and carried its decrees into execution¹³. They had a similar power in all matters, the cognizance whereof belonged to the people in general; they convoked their assemblies, acquainted them with the resolutions of the senate, collected the votes, and declared the majority¹⁴. The laws were likewise, originally, enacted in their own names; which, with other characteristic marks of absolute sovereignty¹⁵, made them objects

¹⁰ Και μη τας αρχας ὁ δῆμος δίδωσι τοῖς ἀξίοις· ὅπρις εἰ καλλίστες ἀσθλῆς ἢ πολυτῆς καλοκαγαθίας. Polyb. 6. 12.

¹¹ He is represented by the historian as speaking to the following effect: Ἡμῖν σκεπτομένοις τίς ἀρχὴ γίνεσθαι τῶν κοινῶν κυρία, βασιλῆας μὴ οὐκ ἐπὶ καταγεσθῆναι δοκεῖ, ἀρχόντας δὲ δυοὺς καθ' ἑκάστου πλείονος ἀποδεικνύειν, βασιλευσὶν ἐξουσίαν ἔχοντας. Dion. Hal. 4. 84.

¹² Ὅτι μὴ ὕψαλοι—παρόντες ἐν Ῥώμῃ, πάσαν εἰς κυρίαν τῶν δημοσίων πράξεων· εἰ τι γὰρ ἀρχόντες οἱ λοιποὶ πάλιν ὑποτάσσονται καὶ πειθαρχοῦσι τούτοις, πολλὴ τῶν δειμαρχῶν. Polyb. 6. 10.

¹³ Οὗτοι τὰ κατεπιγούσα τῶν διαβουλιῶν ἀναδίδουσι, οὗτοι τοὺς ὅλους χειρισμοὺς τῶν δογματικῶν ἐπιτελεῖσι. Polyb. 6. 10.

¹⁴ Και μη ὅσα διὰ τῆς δῆμου συνταλῆσθαι τῶν πρὸς τὰς κοινὰς πράξεις ἀνηκόων, τούτοις καθήκει φροντίζειν, καὶ συναγνῆναι αὐτὰς ἐκκλησίας, τούτοις εἰσφέρειν τὰ δογματικά, τούτοις ἐραβεῖν τὰ διακείμενα τοῖς πλείοσι. Polyb. 6. 10.

The same power is expressed in the following, as well as several other passages in the Latin historians: "Concilio populi a magistratibus dato." Liv. 3. 71.

¹⁵ Ὅτι μὴ ἐκ τῆς τῶν ὑψηλῶν ἀντισταμένη ἐξουσίας, τελείως μοναρχικὴν φαίνεται εἶναι καὶ βασιλικήν. (Polyb. 6. 9.) And further, after enumerating the various prerogatives of the consuls, he adds, ὡς· περὶ τῶν ἡμεῶν αὐτῶν ὅτι τῶν ἐκ ταύτης ἀποβλεψάντων τῆς μεριδίας, διότι μοναρχικοὶ ἄπλως καὶ βασιλικοὶ εἰς τὸ πολυτεύημα. Polyb. lib. 6. 10.

BOOK
II.

of suspicion and terror to the whole people¹⁶. These transcendent magistrates, thus placed in the front of the state, became the main pillars of the aristocracy; a form of government, which, from the beginning, was evidently the principal view of the authors of this memorable revolution¹⁷.

A. U. C.
310.

In the following century, the people, from a wanton desire of trying new experiments, substituted ten officers in the place of the consuls, under the title of Military Tribunes¹⁸. But, though this change occasioned a difference in the name and number of the supreme magistrates, the nature and extent of their power, and the form of the civil government, still continued the same; it will be sufficient, therefore, to pass it over with this slight notice.

Notwithstanding the manifest tendency of the consular power towards aristocracy, upon the original principles of its institution; it must not be denied, that immediately upon the death of Brutus, for the short time that Valerius continued the sole consul, and from his ardent zeal for their welfare, obtained the honorable title of Poplicola¹⁹, the commons were gratified with a few laws, very propitious to the interest of their own order; particularly one, whereby persons accused of crimes were allowed to appeal from the supreme magistrates, to the general assembly of the people, without whose consent no capital punishment whatsoever could be inflicted. By this,

¹⁶ Thus we find the tribune Terentillus Arsa complaining; "Consulare imperium—nimium nec tolerabile liberæ civitati,—no mine enim tantum minus invidiosum, re ipsa propè atrocius quam regium esse; quippe duos pro uno dominos, acceptos, immoderatâ, infinitâ potestate, qui soluti atque effrenati ipsi, omnes metus legum, omniaque supplicia verterent in plebem." Liv. 3. 9.

¹⁷ Αριστοκρατίας δὲ γένεσις ἐκ αὐτοῦ τῆς βασι-

λικῆς ἀρχῆς παραλαβὴς ὑπ᾿ αὐτοῖς. &c. says the historian; to signify, that this was the form of government first intended, upon the institution of the consuls. Dion. Hal. 5. 1.

¹⁸ Liv. 4. 7.

¹⁹ "Latæ deinde leges non solum, quæ regni suspicione consulem absolvent, sed quæ adeo in contrarium verterent, ut populum etiam facerent. Inde cognomen factum Poplicolæ est." Liv. 2. 8.

the

the consuls were restrained to the right of imprisonment only¹⁰; a power, indeed, far short of the former, but often employed to very cruel and tyrannical purposes. Though the foregoing law was no inconsiderable acquisition to the popular cause, yet the wise and dispassionate author, to shew his own sense of the true nature of civil liberty, made another, to impose a penalty upon those, who disobeyed the commands of the consuls¹¹; a wise regulation, which strengthened the hands of the executive power, by a just temperament of liberty with subordination.

But these gleams of orderly and wholesome policy soon expired with this truly great patriot; after whose death, few other of the patricians had either the will, or the integrity, to vindicate the rights of an indigent, and, as they perhaps thought, a contemptible multitude. This popular law, among others, was lost in the disorders that followed soon after; till revived, upon the extinction of the decemviral power, by a worthy descendant of its original author¹², from which time it continued in its full vigor, so long as the free spirit of the antient constitution left room for its operation.

About this time Caius Papyrius, the "Pontifex Maximus," who, by virtue of that high office, had the custody of the public records, undertook to compose a collection, or digest, of all the laws that had

C H A P.
I.

¹⁰ "Ante omnes de provocatione adversus magistratus ad populum." Liv. 2. 8. Misa

δι ταύτην νόμον ἐγράψεν, ὃν μάλιστα μὲν ἰσχυρὴς ἐποίησεν τῆς πολλῆς, ὃ τοι δημῶν ἀπο τῶν ὑπάλων τῶ φευγόντι δικῇ ἐπικαλεῖσθαι δίδου. Plut. in Popl. p. 225.

The operations of this law are thus described by Pomponius: "Qui tamen (sc. consules)

"ne per omnia regiam potestatem sibi vin-

"dicarent, lege lata factum est, ut ab iis

"provocatio esset, neve possent in caput civis

"Romani animadvertere injussu populi:

"solum relictum est iis ut coercere possent.

"ut in vincula publica duci juberent." D. 1. 2. 2. 16. & Muel. ib.

¹¹ "Ὁ δὲ γραφεὺς κατὰ τὴν ἀπειθουσίαν τοῖς ὑπα-
ταῖς, οὐχ' ἥτιον ἰδοῦν δημοτικὸς ἐστίν, καὶ πρὸς τῶν
πολλῶν πολλοὶ ἢ δυτάων γεγραφεῖται. Ζημία γὰρ
ἀπειθείας ἐταξέ. ὅσων τιμῆς καὶ δυνεὶ ἀποβάλλει ἀξία. Plut. in Popl. p. 225.

¹² "Consules L. Valerius, et M. Horatius,—

"alium consularem legem de provocatione,

"unicum præsidium libertatis, decemviri

"potestate everfam, non restituunt modo, sed

"etiam in posterum muniunt." Liv. 3. 55.

BOOK
II.

been enacted, at various times, and upon various occasions, during the reigns of the antient kings; and which, from this cause, and, especially, from the tyrannical irregularity of the late reign, were now in a state of confusion. This useful work was the first source of the written civil law, and, from its author, was called "Jus civile Papyrianum"²³. There have indeed been many doubts who this Papyrius was, and at what time this body of laws was compiled. Pomponius places him in the reign of Tarquinius Priscus, others in that of Superbus; but the most probable opinion is, that he did not enter upon this undertaking, till after the commencement of the republic²⁴.

The people, as it appears, had not, then, fully tasted the sweets of political liberty and order; their triumph over tyranny was, as yet, far from being complete, and their chief comfort was, that their tyrants were but annual²⁵. Though they formed a very considerable branch of the constitutional legislature, even under the monarchy; yet the kings themselves, either by virtue of their own supremacy, or by their influence, which is often much more than equivalent to legal authority, enacted many laws, which came down to these times, under the name of "Leges regiæ." And though, by the abolition of the invidious title and office of king, the people might have been deceived into a notion of being released from their obedience to regal laws, yet it is more than probable, that many of these very laws were still in force, under the character of the antient usages and customs of past times²⁶. As the interpretation likewise,

and

²³ "Non," says Pomponius, "quia Papyrius de suo quicquam ibi adjecit; sed quod leges, sine ordine latas, in unum composuit." D. 1. 2. 2. 2. Grav. O. J. 1. 31.

²⁴ Heineccii Observ. hist. de jure Papyriano. Muel. in D. 1. 2. 2. 36. Ros. Ant. Rom. 8. 5.

²⁵ "Libertatis originem inde magis, quia annum imperium consulare factum est, quam quod diminutum quicquam sit ex regiâ potestate, numeres. Omnia jura, omnia insignia primi consules tenuere." Liv. 2. 1.

²⁶ "Exactis deinde regibus lege Tribunicia, omnes leges hæ exoleverunt," says Pomponius,

and application, of these laws lay entirely at the mercy of their aristocratical magistrates, the lower orders were then really exposed to more severe oppressions, than they had ever suffered under their monarchs.

All fears of a restoration of the regal government being removed, by the death of Tarquin, the nobles let loose the whole torrent of power upon the helpless plebeians²⁷. A most shocking instance of barbarity, exercised by a creditor upon the person of an insolvent debtor, drove the people, already too well prepared for sedition, to an extremity of rage and despair; provoked them to desert the city in a large body, and to retire to hill, a short distance from Rome; where they encamped, with a firm resolution to renounce their mother-country, in which they had been denied the common privileges of nature²⁸.

A defection so universal, and at a time too when the state was embroiled with a formidable enemy, after much contention, brought down the high stomachs of the senators; and obliged them to accept a reconciliation, under the mortifying conditions of abolishing the debts, and of permitting the plebeians to create five new officers, called Tribunes of the People²⁹. The two first of these were C. Licinius and L. Albinus, who were empowered to chuse three other colleagues;

Pomponius, "iterumque cepit populus incerto
" magis jure et consuetudine ali, quam per
" latam legem; idque propè viginti annis
" passus est." D. 1. 2. 2. 3.

²⁷ The tyranny of the patricians, in this age, is well described by a very elegant and judicious historian: "Injurie validiorum, et
" ob eas discessio plebis a patribus, aliæque
" dissensiones domi fuere jam inde a prin-
" cipio: neque amplius, quam regibus ex-
" actis, dum metus a Tarquinio et bellum
" grave cum Etruriâ positum est, æquo et
" modesto jure agitatum: dein, servili im-

" perio patres plebum exercere; de vita
" atque tergo, regio more consulere; agro
" pellere, et, cæteris expertibus, soli in im-
" perio agere. Quibus sævitiis, et maximè
" fenoris onere oppressa plebs, cum assiduus
" bellis tributum simul et militiam toleraret,
" armata montem sacrum atque Aventinum
" insedit; tumque tribunos plebis, et alia
" sibi jura paravit." Sall. Hist. Fragm. 1.

²⁸ Dion. Hal. 6. 26. et seq. Liv. 2. 23.
Grav. O. J. 1. 27. D. 1. 2. 2. 20. & Muel.
ib. Ros. Ant. Rom. 7. 23.

²⁹ Dion. Hal. 6. 89.

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II.

Tribunes.

A. U. C.
260.

among whom was Sicinius Bellutus, a riotous, stubborn demagogue, and the future cause of much outrage and sedition".

To enable them to exert their power with fuller effect, the whole assembly, before they broke up the camp, were obliged to take a solemn oath, both for themselves and their posterity, to preserve the persons of the tribunes sacred and inviolate. The articles of this important convention were confirmed by sacrifices. The hill itself was consecrated to Mars, from whence it was called "Mons Sacer;" and the law there made "Lex Sacra," and likewise "Lex Tribunicia," from the officers there created.

The tribunitian office was extremely humble and modest in its outward appearance; it affected no pomp, it coveted none of the splendid trappings of magistracy; though whatever it wanted in dignity, was amply made up in consequence. As far as it contributed to protect the poor from the oppressions of the rich, and to keep the several constituent powers of the state within their just limits, it was certainly of singular use in the political system, and deserved the warmest zeal and support of every generous friend to rational liberty. But when it transgressed its original bounds, and assumed prerogatives incongruous with the nature and design of its first appointment, it then became a scourge and nuisance to the whole commonwealth".

The tribunes, being mere creatures and agents of the plebeians, were never designed for members of the senate; and accordingly, at their first creation, were only allowed seats at the door, where they sat, and examined the decrees of the fathers, lest any thing should be passed, that might affect or injure their consti-

" Liv. 2. 23.

" " Seditionum omnium causas tribunicia potestas excitavit, quæ specie quidem plebis tuendæ, cujus in auxilium compa-

" rata est, re autem dominationem sibi acquirens, studium populi ac favorem agrariis, frumentariis, judiciariis legibus aucupabatur." Luc. Flor. 3. 13.

tients.

tients¹². But this restraint was of very short duration; for being generally selected out of the most daring, undaunted, and persevering spirits, they soon made a further advance, and gained an actual admission into the house, within two years after their first institution¹³. Of this there are various instances upon record, and one in particular, of a very early date, wherein the tribunes were not only permitted, but were even called upon by the consuls, to deliver their sentiments¹⁴ upon the law for admitting the plebeians to a share of the consular dignity; on which occasion the tribune Canuleius exposed the self-interested designs of the heads of the aristocracy, in a strain that does high honor both to his courage and understanding.

Having succeeded thus far, they next assumed the power of convoking the senate by virtue of their own authority, and of proposing whatever questions they pleased for the subject of their deliberations; a privilege, originally belonging to the consuls only¹⁵. Neither were they content with this; for, by a steady and gradual course of encroachments, any single tribune was at liberty to put a stop to the operations of the whole senatorial body; so as not only to prevent it from passing a decree, but even from consulting thereon, or from assembling for that purpose in any manner whatsoever¹⁶. Their

C H A P.

I

A. U. C.
305.

¹² " Illud quoque memoria repetendum est, quod tribunis plebis intrare curiam non licebat; ante valvas autem positis subselliis, decreta patrum attentissima cura examinabant; ut, si qua ex eis improbabant, rata esse non sinerent." Val. Max.

2. 2. 7.

¹³ Middleton on the Rom. Sen.

¹⁴ " Ως δὲ καθύπερθε ἡ χροὸς ἐν τῷ προβουλευματι οὐκ ἔμελλεν, συνελευσάντες οἱ ἕκαστοι τῶν βουλῶν, καὶ πολλὰς ὑπὲρ ἡμετέρας καὶ ἐπὶ τῶν πολεμίων παρακλήσεις, ἀφ' ὧν ἀποδεδίκατο λόγοις τῶν ἐπιγενομένων δημοσίων τοῦ νόμου. Dion. Hal. 11. 57.

¹⁵ The beginning of this encroachment is fixed by the historian to the consulship of M. Valerius, and Sp. Virginus; at which time,

πολλὰ καὶ ἀποπροσέμαλιν τοῖς δημοσίοις πρὸς τὰς ὑπατοῦς συνέστη ὡς αὐτοῖς, ἐξ ὧν ἴσχυον οἱ δημοσίοι παρασκευάζειν τι τῆς ὑπατικής δυνατείας. τοῖς μὲν γὰρ ἐμπροσθεν χρόνοις ἐκκλησίας μόνον ἦσαν οἱ δημοσίοι κύριοι, βουλὴν δὲ συναγαγεῖν ἢ γινώσκον ἀγορεύειν οὐκ ἔμελλεν αὐτοῖς, ἀλλ' ὅτι τὰς ὑπάτους τούτο τοῦ γένους. οἱ δὲ τότε δημοσίοι πρὸς τὴν συγκαλῆσιν ἐπιβόλην τῶν βουλῶν. Dion. Hal. 10. 31. From henceforth it became a maxim of the constitution, " Nam et tribunis plebis senatus habendi jus erat." A. Gell. 14. 8.

¹⁶ Εὰν τις ἐπιτίμῃ τῶν δημοσίων, οὐχ ὅτι ἐπὶ τέλος ἀγῶν τι δοῦναι τὸν λαβόντα ἢ συγκαλῆσιν, ἀλλ' ὅτι συνιδρύειν ἢ συμπορεύεσθαι τοῖς πραιποσίτοις. Polyb. 6. 14.

B O O K
H.

importance, therefore, beginning to be felt by all ranks of people in the commonwealth, the patricians, even those of consular dignity, ambitiously courted the same popular honors, and were favored in their pretensions by some of the tribunes themselves³⁷.

But among the daily usurpations of these restless demagogues, and their daring invasions of the rights of the other orders, the most pregnant in mischief was, that peremptory negative upon every act of the legislature, claimed not only by the whole tribunitian body aggregate, but by each constituent of it for himself. The obvious effect of this, was the establishment of so many petty sovereigns, not less independent of the state, than of each other; who, by their divers jarring operations, had always sufficient power to impede the springs of government, if they could not accelerate them. Though they sometimes suppressed a bad law, they as often prevented a good one; and could, at pleasure, subject the will of a mighty people, to the fantastic humor of one obstinate ringleader, or pestilent declaimer.

Whatever charms, therefore, this famous institution might have had, in the eyes of all levelling advocates of republican independency, when accompanied with such a boundless train of uncontrollable privileges, it was, in fact, the most pernicious policy that could have been adopted by a people, whose favorite object was equal and universal liberty. It made the head a slave to the feet. It destroyed that harmonious subordination of the several ranks of the community to each other, that regular gradation of power, which is the soul of every perfect government; and, by such unnatural inversions, became,

³⁷ "Nevi tribuni plebis in cooptandis
" collegis patrum voluntatem foverunt.
" Quos etiam patricios, consularesque, Sp.
" Tarpeium, et A. Aternium cooptaverunt." Liv. 3. 65.

This passage of Livy seems to have escaped the notice of Gravina, who says expressly, "Nemo nisi plebeius creari poterit." O. J. 1. 27.

in the end, one of the grand causes of the ruin of that very liberty, it was created to defend¹⁸. C H A P.
I.

The only expedient, which the infant wisdom of those ages could suggest, to obviate the inconvenient effects of this unruly power, was to confine the exercise of it within the bounds of the city itself¹⁹. This was a line which it seldom attempted to pass, even in the most factious times; neither were the tribunes themselves, in strictness of law, ever allowed to sleep without the walls, even for a single night. In cases, therefore, of any violent opposition, if the consul, or other presiding magistrate, had influence enough to draw the people to any small distance into the country, the firebrand of sedition was, for that time, extinguished.

The first forty years, immediately succeeding this interesting change in the government, present to our view a most gloomy scene of uproar and anarchy, in which the different elements of the future constitution lay struggling together in one general mass, each of sufficient force to keep alive the universal ferment; but none endowed with sufficient vigor to gain a decisive victory over its conflicting opposites, and to call forth the whole into symmetry and order. In one part of the picture, the eye is relieved with a display of the most enchanting beauties; in another, offended with the most disgusting deformities. Here—a train of glorious heroes, boldly venturing their lives for the welfare of their darling country; extending the arms of compassion and mercy even to their most inveterate enemies; comforting the friendless, the fatherless, and widows; diffusing plenty and happiness through the whole state.

¹⁸ To this we may very properly apply the following just and beautiful observation of Livy: "Adeo moderatio thendæ liber-
" tatis, dum æquari velle simulando, ita se
" quisque extollit, ut deprimat alium, in
" difficili est; cavendoque ne metuant ho-
" mines, metuendos ultra se efficiunt: et
" injuriam a nobis repulsam, tanquam aut
" facere, aut pati necesse sit, injungimus
" aliis." Liv. 3. 65.
¹⁹ Οὐδὲ ἐποστρεφόντες τὸν τῆς πόλεως ἐκτὸς ἀπὸ τῆς πόλεως ἐφί-
" ταν. Appian. de Bell. Civ. p. 447. edit.
Hen. Steph. 1592.

BOOK
II

and retiring into honorable poverty themselves:—There—a group of tyrannical lordlings and merciless usurers, trampling upon the precious rights of the helpless plebeians; devouring their houses with extortion and rapine; and wallowing in ease and luxury themselves, at the expence of the disabled soldier and the famished mechanic.—Tribunes, on the contrary, courageously standing forth in defence of their oppressed fellow-citizens; nobly vindicating the privileges of humanity, against the rude assaults of their potent and haughty rivals; and as often exciting the people to causeless tumults; audaciously insulting the most illustrious generals, and most virtuous magistrates; arraigning them at the bar of justice; condemning, banishing, or putting them to ignominious deaths; from a mere wanton spirit of revenge and licentiousness.

A. U. C.
296.

In these struggles, however, the scale generally preponderated in favor of the popular party; who, in the end, not contented with the original allotment of tribunes, eagerly demanded to have them doubled^a. This was a boon which the people were not more solicitous to obtain, than the senate willing to grant; wisely perceiving, that the multitude were now become the dupes of their own madness and indiscretion. Private interest, or other mean personal motives, having, at all times, had too much influence in the dispensation of this capricious power, it was easy to foresee, that such an augmentation of their number would soon be fatal to their unanimity; and that these giddy champions of liberty, in some ungovernable fit of sedition, might be as likely to vent their ill-humor upon each other, as to unite together against their superiors. There was a chance also, that, among so many, some might be found of better temper and understanding; and of weight enough to moderate the fury of their boisterous colleagues. These expectations were happily answered: the torrent of faction would often subside, by the mere power of counteraction; and private discord be thus productive of public harmony.

^a Liv. 3. 30.

LEGAL POLITY OF THE ROMAN STATE.

49

CHAP. II.

Laws of the Twelve Tables.—“Decemviri.”—Their Tyranny and Extinction.

THOUGH the creation of this popular office of tribune was a most desirable accession to the cause of the people, and led the way to several future extensions of public liberty; it was far from being a present remedy for divers material grievances, still the subjects of just complaint. The laws, all this while, continued vague and precarious, and the administration of justice was partial and arbitrary. The consuls were imperious, the tribunes rude¹. The patricians and plebeians were more warmly busied in irritating each other with mutual invectives, than in promoting the tranquillity of the republic in general. But the time was now approaching, when the empire of law was to extinguish that of man², when the dawn of political wisdom was to break forth upon this disconsolate scene of ignorance and confusion; and to light this fortunate nation into the paths of true glory; a glory, more splendid and durable than she could possibly derive from her most important successes, and most brilliant triumphs.

CHAP.
II.

A. U. C.
291.

Terentius³ Arsa, an honest and enterprising tribune, in the absence of the chief magistrates, began boldly to inveigh against the pride of the nobility, and the tyranny of the consular government; and proposed that a committee should be created, for the purpose of drawing up a body of laws, to restrain this exorbitant power, and to oblige the consuls

¹ The state of the Roman commonwealth at this period, together with the contest that followed, are finely described both by Dionysius (9. 1, &c.) and Livy (3. 9, &c.), and

deserve the perusal of every learned and curious reader.

² “Imperia legum, potentiora quam hominum.” Liv. 2. 1.

³ Livy calls him Terentillus. Liv. 3. 9.

them-

themselves to administer justice by established rules⁴. The nobles instantly took the alarm at a proposal, which aimed so direct and fatal a blow at their former influence and authority. They complained, in their turn, of the unfair advantage taken by Terentius; that he was going out of the road of his office; that his attempt was insolent, unjust, and seditious. But neither force nor artifice, neither threats nor intreaties, could stagger the resolution of this inflexible patriot. A law so popular, equitable, and salutary in itself, being strenuously supported by the whole weight of tribunitian perseverance, after a tedious altercation of ten years, gained a complete triumph over senatorial obduracy⁵.

This great point once gained, the next difficulty was, how it should be carried into execution; and at last it was agreed, by the joint consent of the senate and tribunes, that three ambassadors should be sent, at the public expence, to the Greek cities in Italy, and likewise throughout all Greece, to collect materials from those flourishing republics; especially from Athens⁶. The constitution of this city in particular, had lately received great improvements, under the administration of those wise and illustrious statesmen, Aristides, Themistocles, and Cymon; and was, at this time, under the patronage of the no less famous Pericles; advantages, which had raised her to the highest pitch of glory, and political perfection, she ever acquired.

These delegates returned, after a journey of two years; and the people, eager to enjoy the immediate fruits of their well-concerted policy, earnestly pressed for the appointment of commissioners, to digest the materials thus collected. The nobles, however, still jealous of their own consequence, exerted their utmost endeavours to obstruct the execution of this laudable design. Their pretence was,

⁴ Ros. Ant. Rom. 8. 6.

⁶ Dion. Hal. 10: 48.—ad fin.

⁵ Grav. O. J. 1. 32.

that such innovations were dangerous; and that the antient laws were sufficient, without further alterations, to answer all the purposes of civil government. In the end, however, the proposal of Appius Claudius was accepted, to commit the management of this important work to a select body of *ten* of the most eminent patricians (in which number were included himself and the three ambassadors), who, from hence, were nominated "Decemviri." This committee was to be invested with the whole sovereign power for one year, during which, all other magistracies, not even the tribuneship excepted, were to cease.

CHAP.
II.

Decemviri.

The "decemviri" entered upon their office with great attention to the business of it; and, with the assistance of one Hermodorus, a Grecian exile⁷, composed a new code, consisting partly of entire laws transcribed from the Greek originals; partly of such as were altered and accommodated to the manners of the Romans; and partly, of the laws of the antient kings, such especially as concerned religion and private rights; rejecting all those that were favorable to monarchical power. These were then engraved on ten tables of brass, and fixed up in the most conspicuous part of the "Forum," for the convenient perusal of the whole people; and having been examined and approved by the senate, they received a solemn ratification, in a general assembly of the Centuries⁸.

Laws of the
Twelve
Tables.

The people, highly pleased with the apparent equity and moderation of their decemviral governors, and finding the necessity of several additions to the first ten tables, sufficient to furnish materials for two more, proposed to elect another magistracy of the same sort, for the ensuing year, at the head of which they, very impolitically, continued Appius Claudius.

This second decemvirate so far answered the end of their appointment, as to draw up the two additional tables that were expected:

⁷ D. 1. 2. 4.

⁸ Liv. 3. 33.

but,

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H.

but, in order to accomplish their own wicked and arbitrary designs, and to excite an irreconcilable enmity between the two orders, they inserted one law, to forbid the patricians and plebeians from intermarrying with each other. A law, so extremely partial and unpopular, so repugnant to every idea of republican equality, could not fail to become the immediate object of universal clamor and detestation. The commonalty, very properly, considered it as a brand of contempt and infamy set upon their whole order, in defiance of the clearest principles of natural justice; and, by a most glorious and invincible perseverance, obtained a repeal, in less than seven years after it was made.

The account of this remarkable event is recorded at large by the two great historians⁹; who have preserved the substance of the speech, supposed to have been delivered by the tribune Canuleius, that, to his immortal honor, had the courage to stand forth the champion of these inviolable rights of his fellow-citizens, against this most selfish and audacious effort of aristocratical insolence. This valuable relique of antient Roman oratory must strike every reader, of true feeling, with the highest pleasure and admiration, whether for the manliness of its eloquence, the liveliness of its irony, or the cogency of its arguments; and well deserves to be remembered, as an example truly worthy of imitation, in all succeeding ages and governments, when, and wherever, the like attempts shall be made, to lay such unnatural restraints upon the common privileges of humanity and social union.

The intriguing Appius, inspired with new hopes by this renovation of his authority, so managed his colleagues, by flattering their ambition, that he prevailed upon them to engage, by a most solemn oath, to support each other against all opposition; and to make the decemvirate perpetual, in spite both of

⁹ Dion. Hist. 11. 57. Liv. 4. 1, 2, 3.

senate and people¹⁰. But the horrid barbarities of this knot of tyrants, and particularly the infamous attempt of the profligate Appius upon the beautiful and innocent Virginia, once more inflamed the spirit of the injured Romans; and provoked them to abolish this pernicious oligarchy, happily before it had well taken root, in the third year after its commencement¹¹.

C H A P.
II.A. U. C.
304.

The laws, however, thus formed under their care and inspection, having been approved, and confirmed, by the general consent of the whole nation, deservedly survived their abandoned editors; and constituted the foundation of that vast fabric of the civil law, which was afterwards erected thereon. The original tables were destroyed, either in the general desolation of the city by the Gauls¹², or in the civil confusions that ensued in later ages; and it is quite uncertain, whether any perfect copy ever survived those calamities, so as to descend entire to posterity. But as the Romans were very assiduous in collecting every transcript and fragment of these precious monuments of antient policy; and as it was made a common exercise for the youth to learn, and rehearse them, by heart¹³, many of them were gradually engraven upon the minds of the people in general; and thus rescued from oblivion by the force of tradition. Several other considerable remains, still fortunately preserved in the writings of the old lawyers, antiquaries, and historians, have been extracted from those authentic repositories; and digested, as near as possible, according to their original order, by divers able civilians of succeeding times, particularly Gravina¹⁴.

¹⁰ D. 1. 2. 2. 24. & Muel. ib.¹¹ Liv. 3. 42—54.¹² Liv. 6. 1.¹³ "Discebamus enim, pueri xij. ut carmen necessarium." Cic. de LL. 2. 23.¹⁴ O. J. 2.

C H A P. III.

“Jus Pontificium,” or *Ecclesiastical Law of Rome*.

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II.

Jus Sacrum,
feu Pontifi-
cium.

ALL the tables before-mentioned (taking them according to Gravina's arrangement), the tenth only excepted, extend to civil rights, and form the “Jus Legitimum,” or in other words, the *common*, or *temporal* law; the tenth is the only one that concerns religious matters, and makes a part of the “Jus Sacrum,” or “Pontificium,” the *ecclesiastical* law, of the Roman state¹. This distinction is clearly pointed out by the best antient authors²; and should be carefully attended to by every learned reader, who means to prosecute his inquiries, with that accuracy and intelligence, which the subject so well deserves. The sources of the former, it is hoped, have been sufficiently marked already; it remains, therefore, to give some short account of the latter, which is essentially different, both in its origin and authority; and is of the highest antiquity, coeval even with the state itself.

A belief of a supreme, eternal Being, which constitutes the first general idea of all religion, is so universally inherent in the very nature of man, that whatever pains may be taken, by the pride of human reason, and the arrogance of metaphysical speculation, to stifle the growth of it; there is no people under heaven so lost in stupidity and ignorance, so abandoned to vice and infidelity, as not to perceive some beams of the Divinity glimmering through the darkness of their understandings, or to feel some faint impulses of him upon their hearts. This religion, therefore, howsoever it may happen to be debased by the falsehoods and absurdities of polytheism, will not fail to produce a powerful influence over the consciences of

¹ Ros. Ant. Rom. 8. 6.

² Cic. pro Domo, 12, 13, 14.

its votaries, to give weight to its precepts, and consequence to its ministers.

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Romulus, though by profession a mere soldier, did not want penetration to see, that a due sense of religion was the best foundation of political security. Though he left much to be done by his successor, yet himself drew the outline of an ecclesiastical establishment; which, considering the general blindness of those times, reflects no small honor upon his legislative character. The religion itself, indeed, was mere paganism, though not so much corrupted by the obscene legends, and licentious ceremonies of the Grecian theology³, as in later ages; but was more simple, and better calculated to promote decency, morality, and reverend notions of those deities, which were made the objects of their worship.

Each "curia," as already observed⁴, was a distinct parish of itself; had its own gods, temple, and priest, with its days of rest and festivity; on which occasions, the inhabitants met to sacrifice, and to feast upon the victims⁵, in a kind of religious communion. Even private families had their tutelary deities, and rites peculiar to themselves, which were taken notice of and protected by the pontifical laws⁶. So high a notion had Romulus of the dignity and sanctity of the priesthood, that he annexed the supremacy in all religious matters to the royal person⁷. He was, likewise, particularly strict in the appointment of the inferior orders; expressly prohibiting the purchase of so sacred an office with money, or the decision of it by

³ Τους δι παραδομους περι αυτων μυθους, η απομνησθεις αυτους θυσιας, και συνισμητο καλα οις βλασφημιας τινος εισι κατ' αυτων η καταγορειαι, πομπους και ανωφελους και ασχημονας υπολαβειναι, και ουχ επι θων αλλ' ουδ' ανθρωπων αγαθων αξιους, απαντας εξεβαλει, και παροσκευασε τους ανθρωπους κρητιστα περι θων λεγειν τι και φρονειν, μηδεν αυτους προσεκτοτας αναξιον επιτηδευμα της μακαριας φουσης. Dion. Hal. 2. 18.

⁴ P. 8.

⁵ Συνδυουσι τοις ιερουσι αι φρατραι εις τας

απομνησθεις αυτους θυσιας, και συνισμητο καλα τας ιορτας επι της φρατριακης ιςιας. Dion. Hal. 2. 23.

⁶ "Sacra privata perpetua manento. Deorum manium jura sacra sunt." Cic. de LL. 2. 9. & 19.

⁷ Ιερων και θυσιων ηγεμονιαν εχων, και παντα δι' εκεινου πραττεσθαι, τα προς τους θεους ιςια. Dion. Hal. 2. 14.

lot. None were qualified for the choice till they were past fifty years of age; and such, only, as were distinguished by birth, fortune, purity of manners, and comeliness of person⁸. Beside the curial, or parish, priests, several others were likewise created, whose ministry was of a more general nature; and to so great a length does Romulus appear to have carried his fondness for the order, as to draw this observation from the historian, “that no instance could be produced, “of so large a number of priests having been ever established in a “new-erected city⁹.”

Numa was religious from reflexion and philosophy. His notions of the Divine Being were, in some instances, both pure and sublime. The favorite object of his reign was to refine and improve upon the religious institutions of his predecessor; though his mind was not sufficiently enlightened, to introduce the worship of the one only true God. On the contrary, he was too great an encourager of polytheism; for he not only permitted the Romans to retain the gods of their ancestors, but erected many temples and altars to others, before unheard-of¹⁰. Therefore, though he had great merit in simplifying the ceremonial part of religion, by the abolition of idolatry, he greatly multiplied the objects of popular superstition: a superstition, indeed, innocent enough in an age like that, where manners were kept in such good subjection by the mere influence of religion; and where every new-created deity (if I may

⁸ Επιπλέον, ὅτι τῶν ἄλλων φαυλὴς ὥς καὶ ἀπερισπαστῶς ὡς ἐκεῖ πολλοὶ ποιούμενοι τὰς αἰρήσεις τῶν ἐπιστημονικῶν τοῖς ἱεροῖς, καὶ τῶν μὲν ἀργύριον τὸ τιμὸν ἀποκηρύττειν ἀξίωντων, τῶν δὲ κληρὸν διαίρουσιν τοὺς ἱερεῖς, ἑαυτοὺς οὐτε ἀνέας χρηματίζονται τὰς ἱερουργίας, αὐτὰ κληρὸν μερίζουσι, ἀλλ’ ἐξ ἐκείνης φρατρᾶς νομοθετοῦσι ἀποδικνύσθαι δύο τοὺς ὑπὲρ πάντων αὐτῶν γιγνόμενους, τοὺς γινῆναι τε προύχοντας τῶν ἄλλων, καὶ ἀρίστη διαφορὰ, καὶ χρημάτων περιουσίαν ἔχοντας ἀρκέσαι, καὶ μηδὲν πλεονέμενους τῶν περὶ τὸ σῶμα. Dion. Hal. 2. 21.

⁹ Ἐν γούν ἄλλῃ πόλει ποκτιθῆναι τοσούτους ἱερεῖς καὶ θρακτικῶν τῶν διὸν αὐτοὺς ἀποδικνύοντας οὐδεὶς αὐτοῖς ἔχει. Dion. Hal. 2. 21.

¹⁰ Πολλὰ μὲν ἀποδικνύει τιμὰς τοῖς μὲν τιμὰς τυγχάνουσιν θεοῖς, πολλὰ δὲ θαιμῶς καὶ ἰσὺς ἱερουργοῖς, ἱερτὰς τε ἐκείνῃ αὐτῶν ἀποκτείνουσι, καὶ τὰς ἐν μεταστομίας αὐτῶν ἱερεῖς καθίστας, ἀγῶνας τε καὶ θρησκευτικὰ καὶ καθαρμικοὺς, καὶ τὰς ἄλλας θρακτικὰς καὶ τιμὰς παντὶ πολλὰς νομοθετοῦν, ὥς καὶ Ἕλληνας ὅτι βαρβαροὶ ἔχει πόλιν, ὅθ’ αἱ μέγιστοι αὐτῶν ἐστὶν φρονέται ὥστε. Dion. Hal. 2. 63.

be allowed the expression) became a new terror to a particular vice, or the patron of a particular virtue.

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III

The ministers of religion were divided into eight classes¹¹; but the only one that immediately concerns the present subject, is that of the "Pontifices." These were erected by Numa into a college, and the original number of them was only four. They were, for many years, chosen entirely out of the patrician families; till two tribunes of the name of Ogulnii, ambitious, like the rest of their brethren, of introducing their own order to an equal participation, with the nobles, of every honor of the state, proposed a law to create four additional ones out of the plebeians¹². To these Sylla added seven more; but, out of respect to those of the more antient establishment, they were distinguished by the title of "Pontifices Minores."

"Pontifices."

A. U. C.
453.

The whole college was governed by a superior, called "Pontifex Maximus," chosen by the "comitia centuriata." This was always esteemed the most respectable office, in the whole scale of honors in the Roman state. It was coveted by all the dictators, and other great men, who pretended to a superiority over the rest of their fellow-citizens, in the later times of the republic. Upon the next great revolution in the government it was assumed by Augustus¹³, and worn by him and his successors, as one of the most splendid ornaments of the imperial dignity, till the time of Gratian; who is said to have been the first Christian emperor that declined it, from a superstitious conceit of its being incompatible with the temporal power¹⁴.

"Pontifex Maximus."

It is much doubted by our modern writers¹⁵, whether the Christian emperors ever accepted this exalted title at all, especially from

¹¹ Dion. Hal. 2. 63—72.

¹² Liv. 10. 6. Ros. Ant. Rom. 3. 22.

¹³ Suet. in Oct. 31. Dio Cass. 54. 27.

"Cæsar innumeris, quem maluit ille mereri,

"Accessit titulis, pontificalis honos."
Ovid. Fast. 3. 419.

¹⁴ Τὸν ἀσκήσαντα, καὶ τὸ ἐνδεὲς ἀποκαταστήσαντα Γράτιον τῆς ἐκείνου ἀπιστίας τῆς αὐτοῦ, ἀδελφὸν καὶ Χριστιανὸν τὸ σὺν ἡμῶν. Zosimus, lib. 4. p. 250. edit. Oxon. 1679.

¹⁵ Lardner's Jewish and Heathenish Testimonies, &c. v. 4. p. 259, &c. Univ. Ant. Hist. v. 16. 8vo. p. 376. note (S).

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those of their own persuasion; or whether they paid that compliment to their pagan subjects only, with whom the practice had been customary: but it is very probable, that this weak and over-scrupulous renunciation of a supremacy in religion, so properly and naturally belonging to every crowned head, might have been a powerful encouragement, among others, to the future usurpation of it by the pope. Gravina, who is every where a zealous advocate for the papacy, highly commends the *pious* example of Gratian, for declining the pontifical habit; though he justifies, or rather pretends to excuse, the exercise of that power by the former emperors, even the Christian ones, as being the only method of keeping the pagan soldiers steady to their oaths and other military obligations ¹⁶.

In compliment to the solemn and venerable office of the priesthood, every order of it was exempted from military service, and all other burdensome employments of the state; and many of these privileges were extended even to their wives and families ¹⁷. The "pontifices," therefore, being the first in rank, had more leisure to attend to civil and political concerns, and to the study of the constitution, as well as to the duties of their particular profession. The rudeness and simplicity of those early ages, and that fierce and martial spirit which pervaded the whole Roman people, were effectual obstacles to the progress of letters; and, consequently, gave very great advantage to those orders of men, who, from their peculiar situation, were more at liberty to employ their time in speculative and rational inquiries. Having thus accumulated a much greater share of useful knowledge than the rest of their fellow-citizens, and being supposed likewise to have some more immediate intercourse with the heavenly beings, their decisions were received as so many infallible oracles. These universal prejudices in their favor did not barely give them influence, but also authority and

¹⁶ De Rom. Emp. 7.

¹⁷ Dion. Hal. 2 21, 22.

jurisdiction; much greater, indeed, than would be strictly consistent with more sound and enlightened policy: but such is the tribute that priestly artifice, in all ages of darkness, took care to extort from popular ignorance and superstition.

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III.

In this manner then did the pontifical college acquire an unbounded sway over the chief operations of civil government, and little less than an entire independence for itself. The members of it, by their superior qualifications, had made themselves the sole interpreters of the law, for several of the earlier centuries¹⁸; and the standing council for all such as were in need of advice, not only in religious, but also in temporal, concerns. A proficiency, therefore, in legal knowledge was one of the most essential parts of their duty. The two professions, likewise, were almost always united in the same person¹⁹. Of this various examples are still preserved in the antient classic authors, such as the Scævola²⁰, Torquatus²¹, Crassus²², Coruncanus²³, Scipio²⁴, and several others, who had all borne the sacred office of "Pontifex Maximus;" and whose memories have been transmitted to posterity, in the highest terms of honor and reverence, for having graced that eminent station, by a comprehensive knowledge of the laws of their country.

A late learned civilian of our own²⁵, justly thinks that the "pontifices" were "not ministering priests," like the other inferior orders, but a college of ecclesiastical judges; an opinion, which he supports by the most indubitable authorities. "Pontificium Jus²⁶, Pontificum Auctoritas²⁷," and other such like terms, expressive of their *juridical* capacity, are frequently found in all the

¹⁸ D. 1. 2. 2. 6.

¹⁹ "Sæpe, inquit Publii filius, ex patre
"audi, pontificem neminem bonum esse,
"nisi qui jus civile cognosset." Cic. de LL.

2. 19.

²⁰ Id. ib.

²¹ Val. Max. 8. 3.

²² Cic. de Or. 3. 33.

²³ Taylor in tit. Jus Pont.

²⁴ Cic. pro Domo, 14.

²⁵ Ib. de LL. 19.

best-informed writers of antiquity. And, indeed, this was no more than what was universal among the Germans²⁶, Britons, and other Celtic nations of the north-western parts of Europe, though always treated by the Romans in the light of barbarians. Among these, the Druids enjoyed the same honors, the same exemptions from military service, and exercised a judicial, if not a legislative, power, even more extensive than that of the Roman "pontifices;" as they seem to have been almost the only judges of the nation, as well criminal as civil²⁷. A pre-eminence extremely natural and obvious in all communities, wherever superstition is the leading principle of human actions.

From the authorities before quoted it appears, that the Roman "pontifices" had a kind of sovereign jurisdiction in matters of the highest importance²⁸. They were the supreme judges in religious controversies, over all persons of what rank soever; and could resolve doubts, give directions concerning public worship, and make, abrogate, or alter the laws relative to sacred matters, at pleasure: so that they were invested with a legislative power within themselves, with regard to the immediate objects of their own institution, wholly independent of the body of the people²⁹. They had an absolute right to visit, and superintend the behaviour of, all the officers of religion, to examine their qualifications, and punish their offences, at their own discretion; neither would an appeal lie from their sentence, to any superior court whatsoever³⁰.

They

²⁶ Tacit. de Mor. Germ. c. 7.

²⁷ "Fere de omnibus controversiis publicis privatisque constituunt; et si quod est admissum facinus, si cædes facta, si de hæreditate, de finibus controversia est, iidem decernunt, præmia poenæque constituunt." Cæf. de Bello Gall. 6. 13.

²⁸ Μεγάλη—ἱερὰ καὶ ἐξουσία ἔχοντες; and a little further, Εἰσι δὲ τῶν μεγάλων πραγμάτων κύριοι. Dion. Hal. 2. 73.

²⁹ Δικάζουσι ὅτοι τὰς ἱερὰς δικὰς ἀπάσας ἰδίῳιαι τε καὶ ἀρχῇ καὶ λειτεργίᾳ θείῃ καὶ νομοθεσίᾳ ὅσα τῶν ἱερῶν ἀγῶναι ὅλα καὶ ἀνδία, κρινόντες αὐτοὶ ἐπιτηδία τυγχάνουσιν αὐτοῖς φανήντο νομῶν τε καὶ ἰδιοματῶν. Id. ib.

³⁰ Liv. 1. 20. Cic. pro Domo, 1. et pene per totum.

Τὰς τε ἀρχὰς ἀπάσας ὅσαι θύσια τε καὶ θύραπια θῶν ἀτακταί, καὶ τοὺς ἱερὰς ἀπαλὰς ἐξουσίᾳ ὑπερῶν τε αὐτῶν καὶ λειτεργίᾳ, ὅς χρῆται πρὸς

They claimed a jurisdiction, likewise, in adoptions (a practice very common among the Romans), under pretence that the new-adopted persons were to be partakers of the religious rites and ceremonies of the families into which they were admitted¹¹.

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Marriages, in all ages and countries, were accompanied with some kind of religious solemnities, in which the attendance of the priest was always required. These therefore fell, at the very beginning, within the verge of pontifical cognizance; and the sacred college had a right, of course, to determine upon the propriety of the marriage itself, and of the several degrees of consanguinity and affinity, within which the parties were prohibited to marry at all¹².

For a similar reason, sepulchral matters were another great object of their power¹³; by which they could enforce any testamentary directions relative to that subject¹⁴; neither could any corpse, when once buried, be dug up, or removed, without their permission¹⁵.

To them, likewise, was committed the trust of drawing up the annals; of digesting the history of the times¹⁶; and of regulating the calendar. In consequence of this, it was their province to settle what days were proper for the dispatch of juridical business, or for a cessation from it, called "dies legitimi, fasti," and "ne-fasti;" i. e. terms and vacations. Their office it was to prescribe

αὐτοὶ τὰ ἱερά, οἱ δὲ φυλάττειν μηδὲν ἐπαρκεῖσθαι παρὰ τὰς ἱερῶν νόμους· τοὺς τε ἰδιωταὶς ὅπως μὴ ἴσασιν τὰς περὶ τὰ θεῖα ἢ δημοτὰς σεβασμῶν, ἐξηγήσας γυναικας καὶ ἀποφύλας· καὶ ἡ τιμὰς αἰσθάνονται μὴ συνδουμοῦν τὰς ἐπιτάγας αὐτῶν, ζῆμους αὐτοὺς ἰσχυρὸν χρῆμα ἰσχυρῶς· ὡς τε ἀντιπαιδὸν πᾶσι δακτύλοις καὶ ζῆμους, οὗτοι βλάβη λόγῳ ἀποδοῖναι αὐτοὶ δημοτῶν. Dion. Hal. 2. 73.

¹¹ Cic. pro Domo, passim.

¹² Tayl. tit. Jus Pont.

¹³ Cic. de LL. 2. 19.

¹⁴ "Quamvis stricto jure nulla teneantur actione heredes ad monumentorum facien-

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"dum, tamen principali vel pontificali auctoritate compelluntur ad obsequium supremæ voluntatis." D. 5. 3. 50. 1.

¹⁵ "Offa, quæ ab alio illata sunt, vel corpus, an liceat domino loci effodere vel eruere sine decreto pontificum, seu jussu principis, questionis est? Et ait Labeo, expectandum vel permittum pontificale, seu jussionem principis: alioquin injuriarum fore actionem adversus eum, qui ejecit." D. 11. 7. 8. pr.

¹⁶ Cic. de Orat. 2. 12.

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the forms and modes of proceedings in courts of justice, which, for very obvious reasons, they always kept profound and inviolable secrets among themselves¹⁷.

Such were the general objects of the "Jus Sacrum," or ecclesiastical law of the Romans, and of the several branches of the pontifical jurisdiction. We find it accurately described by the above-mentioned author, and particularly by Cicero, who was a perfect master of the whole system, and has left a minute detail of the most material parts of it¹⁸, much to the satisfaction of the connoisseurs in ecclesiastical antiquity; who may now easily discern the close analogy between ancient and modern Rome, in many particulars of great constitutional importance. From hence, likewise, they will observe, that the "Pontifex Maximus," of Christian Rome, has very faithfully imitated his pagan predecessor, in the exercise of a sovereign, independent power in matters of religion; though he has seldom thought fit to follow the example of his wisdom in enacting laws, or of his moderation in the execution of them. A truth, one would think, that should effectually put to silence all ignorant and bigotted advocates of papal supremacy.

CHAP. IV.

"Fori Disputationes."—"Responfa Prudentum."—"Legis Actiones."—"Jus Civile Flavianum."—"Jus Civile Ælianum."

THOUGH the twelve tables were the basis of the whole fabric of Roman jurisprudence¹, there was yet a wonderful obscurity, even in their original composition², that took off a great

¹⁷ Cic. de LL. 2. 19. D. 1. 2. 2. 6.

¹⁸ De LL. 2. 8. & 19.

¹ Cic. de Orat. 1. 45.

² A. Gell. 20. 1.

deal from their general utility. Some kind of interpretation was therefore wanted, from the very beginning, either to explain those difficulties; or to fix the use, and regulate the application, of the laws themselves, to that infinite variety of new and complicated cases, which necessarily arose in the daily intercourse of the several members of the same community with each other.

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The most antient interpreters of the law, as we have already seen, were the college of "Pontifices". These, however, must not be mistaken for a convent of religious and superstitious drones, defined by their institution to a recluse, contemplative, and unprofitable course of life; on the contrary, they were generally men of the first rank and family, the most distinguished for their experience and political knowledge, and some of the most useful and active members of the whole state. They mixed with the rest of the world, and made themselves of consequence to it, by the superiority of their abilities, and the importance of their services to their fellow-citizens *.

Respect and pre-eminence, derived from so laudable a source, naturally excited an emulation in many other great statesmen, though strangers to that reverend body, to copy their example. These seem, at first, to have formed themselves into private societies or assemblies, in order to moot such obscure and ambiguous questions of law, as were occasionally referred to their consideration, till they could agree upon some certain and fixed sense, in which they ought in future to be understood. Though they acted herein under no public authority, yet the universal reputation of their wisdom and integrity gave such weight to their decisions, that these were, from time to time, gladly adopted by the courts of justice, and received, by a kind

"Fori Disputationes."

* P. 60.

"*terti Jure Pontificio Urbis Romæ*," Lib. 4.

* The whole of this subject is treated of Græv. Thef. Ant. Rom. vol. 5. very learnedly in a work intitled, "De Ve-

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of general acquiescence, into the body of unwritten, or customary law, under the name of "Fori Disputationes," and sometimes of "Jus Civile" at large⁵.

"Responſa
Prudentum."

In the earlier times, these great sages of the law contented themselves with delivering their opinions in private, to such only as had immediate occasion to consult them⁷. But as juridical business began to multiply, and the utility of this practice came to be more generally understood, the law grew up gradually into a kind of regular science. Men of the highest distinction then made it their *public* profession⁸; and taught it openly in their own houses, as in so many schools, to all such as were desirous of becoming their pupils⁹. A proficiency in legal knowledge was considered, in those ages, as one of the greatest ornaments of a statesman, and the surest road to honors and magistracies: ignorance of it, on the other hand, was disgraceful to every person of birth and fortune, particularly to pleaders and orators¹⁰. From this period, therefore, may be dated the origin of that species of law, particularly known under the title of "Responſa Prudentum."

⁵ D. 1. 2. 2. 5. & 35. & Muel. ib. Grav. O. J. 41. & 42. Tayl. tit. Ref. Prud. Hein. Ant. Rom. 1. 2. 35.

⁶—"Aut est proprium Jus Civile, quod sine scripto, in solâ prudentium interpretatione consistit." D. 1. 2. 2. 12.

⁷ D. 1. 2. 2. 35.

⁸ "Sine controversia et magna est, et late patet, et ad multos pertinet, et summo in honore semper fuit, et clarissimi cives ei studio etiam hodie præfunt." Cic. de Orat. 1. 55.

Thus, in another place, "In jure cavere, consilio juvare, atque hoc scientiæ genere prodesse quam plurimis, vehementer et ad opes augendas pertinet, et ad gratiam." Cic. de Off. 2. 19.

⁹ Cicero speaks of this employment (which was in very high repute in his days) with the warmest encomiums. "Senectuti vero celebrandæ et ornandæ quid honestius potest esse perfugium, quam juris interpretation? Equidem mihi hoc subsidium jam inde ab adolescentia comparavi, non solum ad causarum usum forensem, sed etiam ad decus atque ornamentum senectutis; ut cum me vires (quod fere jam tempus adventat) deficere cœpissent, ab solitudine domum meam vindicarem." To which he afterwards subjoins, "Est enim, sine dubio, domus jurisconsulti, totius oraculum civitatis." De Orat. 1. 45.

¹⁰ Cic. de Orat. passim. D. 1. 2. 2. 43.

It is somewhat difficult, indeed, to separate these from the "Fori Disputationes;" as they were much the same in point of authority, and seem to differ in no other circumstance, than that of antiquity, and in being, the one, the acts of a society, the other, of individuals; yet, perhaps, even this distinction may have no better foundation than conjecture. But as all former writers have spoken of them under different denominations, though without specifying where the real difference lies, it should seem best to adhere to the ancient account, till some good reason can be shewn to justify a departure from it.

The first of these *public* professors was Tiberius Coruncanus," A. U. C. who flourished in the first Punic war, and was the first plebeian ever raised to the dignity of "Pontifex Maximus." His example was followed by many of the most distinguished characters of the times in which they severally lived"; among whom we find the celebrated names of the Ælii, Marcus Cato, Brutus, Mucius, Tubero, Sulpitius, Trebatius, and divers others, of immortal memory, who are well known to all such as are conversant in the writings of Cicero, Horace, and other authors of the classical ages". To the great regret of posterity, no complete body of the works of any one of them has descended to later times; though large detached fragments of their opinions and responses have been preserved by their successors in the same profession, particularly by those of the second and third centuries; from whose collections they were afterwards borrowed by Justinian, and dispersed, under their respective heads, in different parts of the Digest.

Such was the business of the great lawyers and statesmen, during the time of the republic. But as they had acted, hitherto, entirely in their private capacities, their answers and decisions carried with them no other authority, than what they derived from their

¹¹ D. 1. 2. 2. 35. & 38.

¹² D. 1. 2. 2. 35-47. & Muel. lib. Grav.

¹³ Cic. de Orat. 3. 33. Vel. Pat. 2. 128. O. J. 1. 47-72.

¹⁴ Cic. Off. 2. 19.

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own intrinsic merit and good sense. But Augustus extended the compliment to them much further; for he selected a certain number of the most eminent, to whom he gave a commission to become public interpreters of the law, with power even to controul the decrees of the judges by their own arbitrary decisions. A practice, which, though very honorable to the profession itself, was extremely detrimental to the established written law; as it destroyed the simplicity of the antient course of justice, and introduced infinite confusion and variety of opinion in the administration of it; as will be seen much more at large, when we resume this subject under the next period.

“Legis
Actiones.”

The usage of interpreting the laws, in the manner just now explained, had been of great service in clearing away many of their difficulties, and in ascertaining their true sense and meaning. But something more was still wanting to give them vigor and activity, and to suit them to forensic uses. For this purpose, therefore, these learned practitioners contrived certain established writs or forms, by the help of which, method and regularity were preserved in the course of judicial proceedings, and justice was uniformly administered with fuller force and effect. These obtained the name of “Legis,” or “Legitimæ, Actiones.”

The “Pontifices,” whose business it was to regulate the calendar, easily assumed, from thence, the power of fixing the terms or days of business. As the principal expounders of the law, they were the properest persons likewise to digest the forms and modes of the pleadings; and it seems to have been a constant custom among them,

¹ Ros. Ant. Rom. 2. 4. Grav. O. J. 1. “homines disceptarent, quas actiones, ne 33. & 2. 80. “populus prout vellet institueret, certas fo-

The origin and use of them are thus very accurately explained by Pomponius: “De- “lennesque esse valuerunt, et appellatur hæc “pars juris Legis Actiones, i. e. Legitimæ “Actiones.” D. 1. 2. 2. 6. & Muel. ib. “inde ex his legibus, eodem tempore fere, “actiones compositz sunt; quibus inter se

for one of their body to be chosen annually, on purpose to attend the courts of justice, and to see that the proceedings in them were conducted in due order ¹⁶.

C H A P.
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These forms of practice seem to have lain in a very confused and indigested state, for more than a century after their first invention; till the famous Appius Claudius Cæcus, who, among his other honors, was a member likewise of the pontifical college, reduced them all into one uniform collection ¹⁷. The "pontifices," however, from a desire of preserving their own consequence, still kept this useful work closely locked up in their own archives, so that none could obtain a sight of it without their express permission.

A. U. C.
449.

This being, therefore, a matter of universal complaint ¹⁸, it gave encouragement to one Cneius Flavius (who was a kind of confidential secretary of Appius, and had free access to his papers) to make a surreptitious transcript of this curious and valuable work for his own use, which he afterwards published: and as an exact knowledge of the "fasti," or days of pleading, was a point of great moment to suitors, he exposed them upon a table, in full view of the courts of justice, for the general convenience of all parties concerned ¹⁹. This collection, from hence, acquired the title of "*Jus Civile Flavianum*" ²⁰, and was esteemed so acceptable a piece of service to the state, that Flavius, though of very mean extraction, was created successively tribune, senator, and curule ædile.

"Jus Civile
Flavianum."

This publication being so well received, and found of such general utility; new questions likewise arising daily, that were not re-

"Jus Civile
Æmanum."

¹⁶ "Omnium tamen harum et interpretandi scientia, et actiones, apud collegium Pontificum erant; ex quibus constituebatur quis quoque anno præfess priuatis; et fere populus annis prope centum hac consuetudine usus est." D. 1. 2. 2. 6. & Muel. ib.

²¹ Cic. pro Mur. 11. Liv. 9. 46.

¹⁷ "Civile jus, repositum in penetralibus pontificum evulgavit (sc. Flavius), fastosque circa forum in albo proposuit, ut quando lege agi posset, sciretur." Liv. 9. 46.

¹⁸ D. 1. 2. 2. 7. & Muel. ib. Cic. pro Mur. 11. & 12. & ad Att. 6. 1.

¹⁹ D. 1. 2. 2. 7. & Muel. ib. Grav. O. J. 2. 79.

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ducible within the meaning of the rules then extant; Caius Ælius, a lawyer of considerable eminence, soon after the time of Flavius, published a second formulary, composed by himself, and therefore called "Jus Civile Ælianum".

These important secrets being now once brought to light, the custom of preserving and perpetuating such new forms as were occasionally adopted, appears, from henceforward, to have become more frequent; not only in consequence of the progressive increase of juridical business, which naturally called for some new correspondent forms; but, likewise, from several writs of a similar kind, actually existing, at this day, in different parts of the Digest, and carrying evident marks, upon the face of them, of a more recent date, than the period of which we are now treating.

The preciseness and formality of these actions have often exposed them to ridicule, and furnished many fair topics of pleasantry to the wits of the more polite and refined ages, particularly to Cicero; who, in divers passages of his works, affects to hold them in the highest contempt. Those who scrupulously adhered to these niceties in the course of their practice, he is pleased sometimes to banter, in very lively and severe strokes of humor; charging them with perverting the plain language of common sense by their subtle distinctions, with quibbling upon words, and cavilling even at syllables²²; little thinking that he was then drawing his own picture, that he was, himself, the best specimen of his own description, and the most deserving object of his own satire. After all, it must be fairly owned, that the same accusation is too strictly applicable to many other

²² D. 1. 2. 2. 7. & Muel. ib. Grav. "acutus, præco actionum, cauter formulæ." Cic. de Orat.

²³ "Jurisconsultus," says he, "ipse per 2. 55.

²⁴ se nihil, nisi leguleius quidam cautus et

other able advocates, in all ages and countries; when obliged to defend a bad cause, in defiance of truth and self-conviction. This artful orator, however, who never wanted ingenuity to justify whatever opinion it suited his present purpose to maintain, makes no scruple of recanting this raillery, and of confessing that the knowledge and interpretation of the laws was one of the most honorable employments in the commonwealth²². He even goes so far as to own, that forms are indispensably necessary to facilitate the administration of justice²³; and that whoever neglected the observance of such prescribed rules of practice, deservedly lost his cause; or, in the language of the English bar, was nonsuited²⁴.

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But the emperor Constantine the Second, from a mistaken attempt at reformation, forbade their use by a particular rescript, with an express reference to the criticism formerly passed upon them by Cicero²⁵; upon which a very learned French lawyer makes the following pertinent observation: "That although the antient law was, perhaps, too much encumbered with forms, yet these were infinitely more tolerable, than that confusion which would naturally ensue, if ignorant people were left entirely to themselves, to seek for redress of injuries, by such methods only, as were suggested by their own discretion: for the use of them is so great in all courts of justice, that, even if the old ones were to be taken away, they would of course revive, either in their first, or some new, shape; or else be supplied by others of a more modern invention²⁶."

²² "Cum multa præclara majorum, tum quod optime constituti juris civilis summo semper in honore fuit cognitio atque interpretatio." Off. 2. 19.

²³ "Sunt jura, sunt formulæ de omnibus rebus constitutæ, ne quis in genere injuriæ, aut in ratione actionis errare possit, expressæ sunt enim ex uniuscujusque damno, dolore, incommodo, calamitate, injuria, publicæ a prætore formulæ ad quas privata lis ac-

commodatur." Pro Rosc. Com. 8.

²⁴ "Ita jus civile habemus constitutum, ut causa cadat is, qui non, quemadmodum oportet, egerit." De Inv. Rhet. 2. 19.

²⁵ "Juris formulæ aucupatione syllabarum insidiantes, cunctorum actibus radicitus amputentur." C. 2. 58. 1.

²⁶ Cujac. paratit. Cod. ad 2. 58. 1. de form.

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The "Legis Actiones," and several other forms to be found in the system of Roman judicature, deserve the attention of our English lawyers, much more than they may be at first aware of; because they bear a strong analogy to many of those legal forms, so much in use in the earlier times of our constitution, more immediately succeeding the Norman conquest; which are still preserved in "that most antient and highly venerable collection," as it is justly called, "the Registrum Omnium Brevium." These writs, it should be remembered, had their origin in chancery²⁷; a court, in that age, entirely under the government of ecclesiastics, who gave a partial preference to the Roman law, before the law of the land; and who, consequently, would be more likely, as occasion served, to adopt, or imitate, their own favorite system, than another, which they despised, and treated as barbarous.

To mention one striking instance of the truth of this observation, the writ "de Ventre Inspiciendo"²⁸, has a direct view to an antient Prætorian edict, still preserved in the Digest; abridged, indeed, and accommodated to the practice of an English court of justice, but evidently founded upon the same natural principle²⁹: and it should seem highly probable, that, upon a more diligent search, many others of the same kind might be discovered, so as to form a very curious and instructive comment upon a great part of that collection. It is true, that an affected fondness for novelty, and improvement (as it is sometimes thought) in judicial proceedings, hath brought many of these old writs into disuse; but they must yet command the veneration of every true lover of antiquity; especially, as the real utility of them is so ably justified by our modern oracle of English jurisprudence; who says, that, in them, "every man, who is

²⁷ Blackstone's Comm. v. iii. p. 183.²⁸ Reg. 227.²⁹ For which reason it is called *Officina* *Justitiæ*. Ib. v. iii. p. 48 & 273.³⁰ D. 25. 4. 1.

"injured, may find a method of relief, exactly adapted to his own
 "case, described in the compass of a few lines, and yet without the
 "omission of any material circumstance".

C H A P.
IV.

C H A P. V.

*The principal Legislative Powers of the Roman State.—Methods of
 voting, and of enacting Laws.—“Leges.—“Plebiscita.”
 —“Senatusconsulta.”*

IN the preceeding chapter we have taken a general view of the primitive sources of the Roman law, as contained in the foregoing collections, viz. the Papyrian Law, the Twelve Tables, the “Legis Actiones,” and “Interpretationes Prudentum, or “Fori Disputationes;” which, together, constitute the *Antient Jurisprudence*’.

But as the state daily increased both in numbers and territory, and was perpetually extending her views to new objects, fresh matters naturally arose, that could not be comprehended within the sense and design of the laws then in being. To supply these defects, therefore, it was necessary, as occasion required, to enact many new ones; all which are reducible to the following species:

I. The first, such as were passed at the instance of a senatorial magistrate, by the whole aggregate body of the people², senators and patricians, as well as plebeians¹, in whom alone the majesty of the state resided. A law, thus enacted, was called “Lex,” in its strict and proper sense.

²² Blackst. ut supra.

¹ Grav. O. J. 1. 33.

² “Quod Populus Romanus, senatorio

magistratu rogante (veluti consule), con-

stituebat.” I. 1. 2. 4.

³ Grav. O. J. 1. 27.

Legislation was a science, among the antient Romans, cultivated with the greatest circumspection, and with every refinement of wisdom and philosophy. They had even laws to instruct them how to make laws. In framing and digesting the original plan of a law, the maker of it thought himself obliged to observe every previous caution that good sense could suggest, that it might come before the public, even in its first concoction, in the most perfect and unexceptionable form possible⁴. To this end, he consulted upon it with his friends in private, lest it should contain any matter, detrimental to the general interest and will of the people; any contradictory clauses, or such as might weaken the force of any former law, not specially designed to be repealed or altered by it; or even any partial words, that might tend to confer any particular advantages upon his friends, relations, or himself. These delicate provisions were introduced by the "*Lex Æbutia*," and "*Licinia*".

Unity and simplicity, likewise, being another essential perfection of every law, the "*Lex Cecilia*" and "*Didia*" expressly forbade the insertion of any matter repugnant to, or in any respect not correspondent with, the tenor or purport of the law then in contemplation; as, by this incoherent mixture, the people might be obliged to receive as law, what they might not approve; or to reject, what they might desire⁵.

⁴ Ros. Ant. Rom. 8. 2. 7. Grav. O. J. 1. 29.

⁵ This law is thus alluded to by the great orator: "*Leges sunt veteres, neque ex consules—sed tribunitiae, vobis, majoribusque vestris vehementer gratæ atque jucundæ. Licinia est lex, atque altera æbutia: quæ non modo eum, qui tulerit de aliquâ curatione ac potestate, sed etiam collegas ejus cognatos, affines excipit, ne eis ea potestas, curatiove mandetur.*" Cic. pro Lege Agr. 2. 8. et pro Domo; 20.

⁶ Thus we find the force of this law ex-

plained by the same great authority, in the following question: "*Quæ est quasi alia vis, quæ sententia Cæcilie legis et Didie, nisi hæc, ne populo necesse sit in conjunctis rebus compluribus, aut id, quod nolit, accipere; aut id, quod velit, repudiare.*" Cic. pro Domo, 20.

It were well (to speak with all due deference), if this very sensible rule were observed in a great modern assembly, where the practice of *tacking*, as it is commonly and quaintly styled, has often occasioned more confusion, than the act itself was made to prevent.

When

When occasion called for a new law, of the kind now in consideration, any of the higher magistrates⁷ who chose to undertake the charge of it, as the consul, prætor, or dictator, having first observed the before-mentioned ceremonies, submitted it to the inspection of the senate. If approved there, it was *fixed* up publicly in some conspicuous part of the Forum, for every one, that pleased, to consider, and make himself master of, the contents⁸; and a general meeting of the "comitia" was appointed by proclamation, for the morrow of the third market-day immediately succeeding; *i. e.* after the expiration of twenty-seven days. This very useful regulation seems to have been first introduced by the law last mentioned; but being deficient in some essential particulars, a new one was enacted; not many years afterwards, to inflict much heavier penalties upon the neglect of this important ceremony of promulgation.

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A. U. C.
655.

A. U. C.
691.

Rules, to prevent surprise in passing laws, are of the utmost benefit in every constitution, formed upon the principles on which the Roman then stood. For though a sudden exertion of an unconstitutional power, on some unforeseen emergency, may put an effectual stop to a particular mischief; yet as instances of that kind rarely happen, it is better even to lose a small temporary advantage, than to preclude the lawful constituents of the legislature, from an opportunity of deliberating upon the expedience of those laws, from which the community is to derive its protection. Were the ministerial, and more active, members of the state to be indulged with the privilege of ac-

⁷ "Magistratus majores."

⁸ This plain and easy mode of promulgation was in general use in those primitive ages, and is frequently alluded to in the classic authors. Thus Ovid, with a clear reference to the Twelve Tables, speaking of the golden age, that required no penal laws, observes,

"Nec verba minacia *fixo*
"*Ære* legebantur." Metam. 1. v. 89.
And from hence the words "*Figere*", and "*Refigere Leges*," signify to enact or abrogate laws. Thus Virgil likewise describes a corrupt lawgiver under the following character:

"*Fixit leges pretio, atque refixit.*"

Æn. 6. 622.

celerating

celerating the motions of the legislative body, at their own pleasure; they might easily, under the plea of public necessity, hurry so large and unwieldy a multitude beyond the measure of their own natural paces; and thus drive them into acts of precipitation, fatal to their most valuable rights. Delays, in matters of this nature, how irksome soever they may be to impetuous or narrow minds, are, in fact, the strongest evidences of the true liberty of a nation; and ought to be observed, with every ceremonious formality, which the law has thought proper to impose. The wisdom, therefore, of old Rome, in requiring these strict pledges, for securing the exercise of private judgment, is highly worthy of applause and imitation.—A Briton has not far to go, for a full exemplification of the salutary effects of the same principles⁹.

The appointed time being arrived, the people assembled, according to their centuries, in the Campus Martius; the present business particularly belonging to the “comitia centuriata.” The law being then proclaimed by the public crier, the magistrate who proposed it, was expected to speak first in its support. After him, any other member of the assembly, having first obtained the leave of the president (a mere compliment of course), was at liberty to deliver his sentiments likewise, on whichever side his own judgment inclined him¹⁰. To obviate any undue influence of the higher ranks over the lower, a private man had always the privilege

⁹ The ill consequences of departing from these established rules, on occasion of some extraordinary and irregular favors granted to Antony, are displayed by Cicero, in the following very masterly address to the senate, in which he, at one view, brings before them all the laws, ever made to secure the freedom of legislation. “Tribuni plebis tulerunt de provinciis contra acta Cæsaris: ille biennium, iste sexennium. Num etiam hanc

“legem populus Romanus accepit? Quid? Promulgata fuit? Quid? Nonne ante lata, quam scripta? Nonne ante factum vidimus, quam futurum quisquam est suspicatus? Ubi lex Cæcilia et Didia? Ubi promulgatio, trinundinum? Ubi poenæ recentis lege Junia et Licinia? Possunt ne hæ leges ratæ esse, sine interitu legum reliquarum? Phil. 5. 3.

¹⁰ Cic. de LL. 3. 4. Liv. 46. 21.

inclosures made to receive them; where certain officers, styled "Di-
 "ribitores," delivered to every voter, two tablets, marked with capital
 letters, viz. one with U. R. *i. e.* "Uri Rogas," be the law passed
 as you have proposed; the other with A. *i. e.* "Antiquo," I would
 have it as it was of old, let there be no innovation". A suitable
 number of chests were placed within the "septa," into which each
 person threw whatever tablet he pleased. Another officer then took
 out the tablets of each century, and, for every one, made a point
 or mark in a correspondent tablet kept by himself: the greatest
 number of points determined the sense of that century, and the
 greatest number of centuries passed for the voice of the whole
 people, and either confirmed or rejected the law". The same me-
 thod was likewise observed in public trials before the people, when
 the tablets were inscribed with the letters, A. *i. e.* "Absolvo," C.
 "Condemno," or N. L. "Non Liquet." It was used also in elections,
 in which, instead of letters, were inserted the names of the several
 candidates.

The "Leges Tabellariæ" were certainly a great improvement
 to such a free system of government, as the Roman then was; and
 Cicero pays the tablet the compliment, to call it the "silent assertor
 "of liberty". But as the effusions of oratory are not always the
 most sure dictates of the heart, we find him, upon other occasions,
 speaking in a different strain; and representing these very laws
 in the most odious light possible, as destructive of the weight and
 consequence of the nobility, and as encouraging popular insolence
 and temerity".—No doubt he then uttered his real sentiments.

²¹ Ros. Ant. Rom. 9. 31. Steph. Thes. sub verbo.

²² Upon this is founded the common ex-
 pression,

"Omne tulit punctum;

Hor. Art. Poet. 343.

which is likewise adopted by the English
 language, "He has carried every point."

²³ Pro leg. Agr. 2. 2. & de LL. 3. 17.

²⁴ De Amic. 13. De LL. 3. 16. Pro
 Sext. 48.

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II.

“Plebiscita.”

II. The second species of occasional written law was called “Plebiscitum;” which was enacted by the plebeian body alone, at the rogation of one of their own magistrates²⁵. The “plebiscita” were originally made in the “comitia tributa,” (in which the influence of the lower ranks were more predominant) at the instance of the tribunes; and were partial laws, binding the plebeians only²⁶. But as the senators and patricians greatly oppressed them, by their attempts to erect an aristocratical power, they were provoked, as we have already seen, into several secessions, which produced many regulations in their favor.

A. U. C.
304.

The first of these was the “Lex Horatia,” enacted at the instance of the consuls Lucius Valerius Potitus and Marcus Horatius Barbatus, from the latter of whom it received its name; he having, probably, been the most active in procuring it. The senators were, by inclination, very strongly against it, but were ashamed to give much opposition, lest they should subject themselves to the charge of partiality to their own power and interest; for, by this act, all laws, passed in the “comitia tributa,” were put upon the same level, and were made equally binding, with those in the “comitia centuriata”²⁷: a law which, in the same proportion as it mortified the pride of the senators, increased the consequence of their rivals, the tribunes²⁸.

A. U. C.
414.

It should seem, as if this law had lost its force in the course of one century; for we find, that, soon after the expiration of that interval, the dictator Publilius Philo (whose magistracy is celebrated for its

²⁵ “Quod Plebs, plebeio magistratu rogante (veluti tribuno), constituebat.” I. 1. 2. 4.

²⁶ D. 1. 2. 2. 8.

²⁷ Ἀπὸ τῆς ἀρχαίας Ῥωμαίων ἐξ ἰσοῦ. Dion. Hal. 11. 45. And, as says the Roman historian to the same effect, “Ut quod tributum plebs jussisset, populum teneret.” Liv. 3. 55.

²⁸ Thus, speaking of the present consuls, he says, “Quorum consulatus popularis, sine ulla patrum injuria, nec sine offensione fuit. Quicquid enim libertati plebis cavetur, id suis decedere opibus credebant.” And then, soon after, of the law in question, “Qua lege tribunitiis rogationibus telum acerrimum datum est.” Liv. ib.

popularity⁴⁹), enacted another law of the very same import with the foregoing. He carried likewise a second, whereby the senate was obliged to ratify, by their previous assent, all laws that were to be referred to the "comitia centuriata," before the suffrages of the people were taken upon them; so that they should stand in need of no further confirmation, or be in danger of any negative from the subsequent decrees of the fathers. This law was, therefore, called "Lex Publilia."

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But as the patricians, jealous of their own power and privileges, still continued to oppress the plebeians, and exerted their utmost endeavours to frustrate these popular laws, the people broke out into another sedition, and seceded to the Janiculum. To appease this tumult, Quintus Hortensius was created dictator, who thought proper to pass another law, from him called "Lex Hortensia;" whereby this long-contested point was finally settled, the foregoing laws confirmed, and the "plebiscita" were indulged with the full force of the "leges," or laws in their strictest constitutional meaning⁵⁰.

A. U. C.
467.

This injudicious aggrandizement of the lowest order of the state, at the expence of all the rest; together with a too promiscuous communication of the highest honors and offices which soon followed; however flattering it might have been to plebeian vanity, gave a most fatal wound to the true interest of the community in general⁵¹. The influence of the senate being thus abridged, and the
deference

⁴⁹ "Dictatura popularis, et orationibus in patres criminosis fuit, et quod tres leges secundissimas plebi, adversas nobilitati tulit: unam, ut plebiscita omnes Quirites tenerent: alteram, ut legum, quæ comitiis centuriatis ferrentur, ante initum suffragium patres auctores fierent." Liv. 8. 12.

⁵⁰ Supp. ad Liv. 11. 26.

⁵¹ That the democratical form predominated over all the rest, is evident beyond doubt, from the testimony of Polybius, who lived and wrote about the time of the third Punic war; was an intimate friend of the second Scipio; and, by a long residence in Rome, had acquired a perfect knowledge of the true principles of the constitution, as it then was. This author, speaking of the

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deference to the provident counsels of the better sort greatly diminished, the blind and giddy multitude, released from all further restraint, broke loose into every extravagance of boundless liberty. Intoxicated with the excess of faction, they became the easy tools of their designing and ambitious demagogues; who having at first employed them to subdue their own rivals and antagonists, in the end made slaves of them all. The primitive constitution, thus lost to its original virtue and purity; grown unwieldy, and fatigued with all those vicissitudes and distractions, which are so naturally appendant to this tumultuous and imperfect form of government; sunk, at last, with its own weight, into the arms of military and arbitrary power³².

"Senatus-
Consulta."

III. In a state so constructed as the Roman, it is no wonder that the struggles between the higher and lower ranks were of so long duration, and were carried on with such inflexible perseverance on both sides; without coming to any decisive point of superiority on either, for several ages. In the earlier times, the nobility maintained their ground so firmly, that no acts of the commons were valid, till they had obtained the confirmation of the senate. Afterwards, however, as we have just now seen, the tables were effectually turned³³. And yet, notwithstanding the advantages thus gained by the commonalty, they were far from annihilating the power of the senate; on the contrary, they left it a special jurisdic-

share of power which belonged to the people, says, Ου μὴν ἀλλὰ καὶ ἀλειψίται μίρις καὶ τῷ δήμῳ, καὶ καὶ ἀλειψίται γὰρ βαρύνει. And, after a detail of their various prerogatives, he concludes, Ὡς πάλιν ἐκ τούτων ἰσχυρῶς αὖτις εἰπὴν ὅτι μεγίστην ὁ δῆμος ἔχει μίριδα, καὶ δημοκρατικὸν ἐστὶ τὸ πολιτεύμα. Polyb. 6. 12.

³² Grav. O. J. 1. 28, & 104. Hopp. & Vinn. in I. 1. 2. 4.

³³ Ὅ, τι δὲ ταῖς πλεονασίαις δοξίαις φρατρῶν, τούτο ἐπὶ τῇ βουλῇ ἀνέφερετο. ἐχ' ἡμῶν δὲ μετακίται τὸ

ἔδος. οὐ γὰρ ἡ βουλὴ διαγινώσκει τὰ ψήφισματα ὑπὸ τοῦ δήμου, τῶν δ' ὑπὸ τῆς βουλῆς γινώσκονται ὁ δῆμος ἐστὶ κύριος. Dion. Hal. 2. 14.

Ἡ γὰρ μὴ συγκλητὸς — ἐν τοῖς κοινῶν πραγμάτων ἀναγκαζέσθαι προσερχεῖν τοῖς πολλοῖς, καὶ ῥοχαζέσθαι τῷ δήμῳ — ὁμοίως δὲ καὶ περὶ τῶν ἐκ ταύτης ἀνηκόντων. εἰ γὰρ τις ἐσφίρητο μόνον — πάλιν ὁ δῆμος γινώσκει τῶν τοιούτων καὶ δύναιται, καὶ μὴ, κύριος. — διὸ πάλιν τῶν προειρημένων χάριν δίδει τῶς πολλοῖς, καὶ προσερχοίτο τοῖς τοῦ δήμου ἢ συγκλητῶν. Polyb. 6. 14.

tion,

tion, in several very important matters, even to the exclusion of their own authority. This, indeed, was a natural effect of the gradual increase of the people; who became too multitudinous, to be conveniently assembled upon every trifling occasion. They were, therefore, under a kind of necessity of intrusting several branches of the administration to the senate, to which was likewise annexed a privilege of legislation; partial and subordinate, it must be confessed, but ample and extensive enough to insure it a considerable share, both of respect and consequence.

A "senatus-consultum," therefore, is that which the senate ordains and constitutes³⁴. An act of this kind did not indeed pass into a general law; but, in compliment to the venerable body from whom it proceeded, was allowed to continue in force for one whole year³⁵, but not longer, unless ratified by the common course of "rogatio ad populum"³⁶. To prevent it, likewise, from being suppressed or altered by the consuls, a law was made in very early times, that it should be transmitted to the ædiles, and preserved in the temple of Ceres.

As the popular cause gained ground, the tribunes assumed a right of putting a negative upon any decree of the senate, at their own pleasure³⁷. If, therefore, any one of these officers interposed, even against the consent of the rest of his brethren, it was then called no more than "senatus-auctoritas," and had not the force of law, till it had been referred to the people, who reserved to themselves the liberty of judging of the propriety of this intercession. If found to be made upon unjust or frivolous pretences, they might set it aside, and even inflict a punishment upon the tribune himself³⁸;

³⁴ "Quod senatus jubet atque constituit,"
L. 1. 2. 5. D. 1. 2. 2. 9. & Muel. ib.

³⁵ Οὐδὲ νῦναι νόμος εἰς αἱ κυρίας ἂν ψηφίζηται το
συνεδρίον, ἀλλὰ πολιτευμάτων καιροὶ νῦναισιον ἔχοντα
ισχυρὸν. Dion. Hal. 9. 37.

³⁶ Cic. pro Cluen. 49.

³⁷ εἴ τι τι καλὸς εἴς τοις δῆμαρχοις το κράτος
ὑδὲν γὰρ οἱ πολλοὶ κλεινοῦς περιμένοντες ἔπος ἡγεμῶν.
Plut. in Tib. Graccho, p. 358.

³⁸ Grav. O. J. 1. 23.

but

but if it passed without any opposition, it was then, and then only, "senatus-consultum."

A. U. C.
690.

Notwithstanding these restraints, however, the senate still enjoyed several very high and transcendent prerogatives; among the rest, that of dispensing with laws by their own decrees; and those, too often, made in a clandestine manner, in presence of a few members packed for the occasion. A power, at all times so dangerous to a free constitution, and so frequently applied to many very scandalous purposes, especially in the later and more corrupt times of the republic, loudly called for correction. Caius Cornelius, therefore, an intrepid and honest tribune, made an attempt to reduce it to its first principle, by vesting it in the body of the people at large, from whom all laws originally proceeded. But, though this design was hindered from taking effect in its full extent, by the intrigues of the senate, and the iniquity of the times; yet he prevailed so far, as to procure a law, forbidding the senate the exercise of their dispensing power, unless two hundred senators were present³⁹.

This spirited exertion of tribunitian courage was some check to the insolence of the aristocracy for a season; but, after the reign of Tiberius, when many of the Cæsars had degenerated into complete tyrants, and had destroyed the antient constitution, without troubling themselves to form a new one, the senators, either by permission or connivance, assumed the power of enacting laws, by the sole virtue of their own authority⁴⁰. But this abuse does not relate to the times, to which our present observations are confined. During *this* period, says Gravina, "Juris divisio commode duci potest a senatu, plebe, et populo"⁴¹.

³⁹ Ascon. in Frag. Cic. Orat. 1. pro Præcog. Jur. c. 1. § 23, 24. 29.
Corn. Hooke's Rom. Hist. 8. 9.

⁴¹ O. J. 1. 28.

⁴⁰ Vinn. & Hopp. in L. 1. 2. 5. Hopp.

Great care should be taken, to observe this distinction between the several constituent parts of the Roman state, and the legislative rights peculiar to each, according to the specific description given by Justinian⁴¹. "*Plebs a Populo, eo differt, quo species a genere*" "Nam appellatione *Populi* universi cives significantur, connumeratis etiam patriciis et senatoribus. *Plebis* autem appellatione, sine patriciis et senatoribus, cæteri cives significantur." This distinction likewise leads us to another equally material, the consequence of the former, between "*leges, plebiscita,*" and "*senatus-consulta;*" which must always be mentioned in the original Latin names; there being no single words in our language, that correspond, with sufficient exactness, to the Roman ideas of them. For though all their distinct relatives subsist in the English constitution, with some obvious variations; yet the *Orders* of the Houses of Lords and Commons, are no more than a kind of bye-laws, affecting only the members, and transactions, of that house, in which they were made; but the legislative power resides, solely, in the collective body of the several constituent estates of the realm; and no laws are binding upon the whole nation, but those of the first sort, or "*leges,*" properly so called.

A careful review of some of the preceeding chapters, will enable us to form a more exact judgment of the boasted perfection of the Roman government.

Great and prosperous as it actually became in the course of time, it owed very little of that grandeur to any regular chain of political reasonings, or to the prophetic deductions of deep-sighted philosophy; but rather, to a diligent and unremitting attention to the various incidents, that occasionally offered themselves, in the several struggles and difficulties, in which this active people were so frequently involved. By taking a proper advantage of these, as they

⁴¹ I. 1. 2. 4.

happened,

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happened, and by always chusing the most promising and beneficial, they arrived, says Polybius, at the very same end that Lycurgus attained, and formed the most beautiful system of government then existing ⁴⁴.

In contemplating, therefore, its rapid increase; its unexampled success; the profound awe and veneration which it impressed upon the whole antient world; we may be tempted to believe, that the various parts of it were so ingeniously contrived, and the respective powers of each order so equally poised, as to secure to it an uninterrupted state of union and stability; and, from hence, to accede to the opinion of the same writer, that "it was not possible for human wisdom to invent a more perfect scheme of civil policy ⁴⁵."

It is to be feared, however, that this eminent author was too much dazzled by the lustre of the period in which he wrote; and that he gave a higher coloring to his picture, than could be well justified from a view of the original. By the final subjection of her most potent and formidable rival, the republic was then advanced to the brightest æra of her glory; when she might, indeed, best deserve so flattering a compliment, at the least expence of sincerity and truth. But, with all his knowledge of Roman affairs ⁴⁶, the fidelity of the historian seems to have yielded too much to the partiality of the panegyrist, in favor of that state, which had atchieved such wonders, by the hand, especially, of his pupil, friend, and patron.

In the cooler moments of his reflexion, he well knew, that the most valuable productions, both of the political and physical world,

⁴⁴ Ρωμαῖοι δὲ το μὲν τέλος τ' αὐτο ἀπέποιήσαι τῆς ἐν τῇ πατρίδι καταστάσεως, ὃ μὲν διὰ λόγου, διὰ δὲ πολλῶν ἀγωνῶν καὶ πραγμάτων, ἐξ αὐτῆς αὐτῆς ἐν ταῖς περιπετείαις ἐπιγνώσεως αἰρεμένοι το βελτίον, ὥτως ἤλθοι ἐπὶ τ' αὐτο μὲν Λυκουργῶν τέλος, καλλίστου δὲ οὐδεὶς τῶν κατ' ἡμᾶς πολιτειῶν. Polyb. 6. 9.

⁴⁵ Ὡς μὴ οἷον τ' ἵσται ταύτης ἑρμῆς ἀμύνει πόλεως συστάσιν. Polyb. 6. 16.

⁴⁶ Livy bears this testimony to his character, "Polybium secuti sumus, non incertum auctorem, quum omnium Romanarum rerum, tum præcipue in Græcia gestarum." Liv. 33. 10.

carried within themselves their own congenial defects⁴⁷; inasmuch, CHAP.
V. that, though they might chance to escape external injuries, they were liable to be corroded and destroyed by certain internal principles of corruption, implanted in their vitals by the hand of Nature. Such was the contexture of the Roman constitution, which, even in the summit of its felicity, was plentifully stored with the seeds of its own dissolution⁴⁸. The same powers, that, by an amicable co-operation with each other, cemented its various parts in one firm bond of union and friendship, by any wilful abuse or misapplication, became, with the same facility, the causes of the most ruinous discord⁴⁹.

The time was not very far distant, when the pride of victory, and the deceitfulness of prosperity, were to extinguish that patient bravery, that unaffected purity of manners, which had hitherto directed her feet in the paths of true glory. The meek spirit of obedience, which is the soul of political order, was now to give way to a turbulent impatience of legal restraint, and to an overweening conceit of self-consequence; when every pert demagogue was to think himself at liberty to disturb the decorum of popular assemblies, by his seditious declamations; as if effrontery of face, and volubility of tongue, were the only necessary accomplishments of an orator and a statesman.

When, therefore, we consider this celebrated constitution, with all these precarious and uncertain effects; there will be no injustice in saying, that, in almost every period of its existence, it was more excellent in its parts, than in the whole. Though the materials of

⁴⁷ Συμφωνη κακα—καλα φυσιν μιαιβουλαι, οικεια συγγυνηται καλα φυσιν ικαση και παρενηται τις κακια. και φυσιν παρικομενη καλιε.—Together with Polyb. 6. 8.

many other similar expressions. Ib. passim.

⁴⁸ Καθαπερ γαρ σιδηρον μιν ιος, ξυλοις δε θριπες και τερηδεις συμβουις ισι λυμαι, δι' ων κ' αν πασας και τερηδεις διαφυγωσι βλαβας, οπ' αυτων φθιμενηται της συγγυνομενης του αυτου τροπον και των πολυλειων ⁴⁹ Τοιαυτης δ' ουσης της ικασης των μερων δυναμεις, ις το και βλαπτειν και συτηρειν αλληλοις προς πασας συμβαινει τας περιστασις δευλωις ιχεν την αρμογην αυτων. Polyb. 6. 16.

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which it was composed were good in their kind, yet they wanted the hand of one able architect, to give them that uniformity and harmony, which are essential both to the strength and beauty of the edifice. The numerous constituents of this vast and complex body were generally much too independent of each other : they too often neglected, or even purposely avoided, that mutual communication of sentiments, which the nature of legislation always requires ; consequently, the laws made by each respectively, bore too partial a relation to the interest of their own order, to be of any extensive use to the whole community. This was particularly the case in the more unsettled and distracted times of the republic ; when laws were frequently passed, even as it were in spite ; and were dictated by a jealousy of each other's superiority, rather than by a disinterested zeal for the common cause of social tranquillity. Thus, the balance of orderly policy could never settle into its due equilibrium ; but was kept in a continued state of oscillation between both extremes, till it finally preponderated in favor of one great leviathan of power, who became, of himself, more than equal to all the rest together ; a fatal consequence, that will ever result from popular liberty, when more eagerly coveted, than well understood ; and more tumultuously asserted, than temperately enjoyed.

Under the present view, therefore, of the legal polity of this illustrious state, it may be well compared to a plentiful magazine of heterogeneous merchandizes, which, when thrown together in one undistinguished mass, disgusts the eye with its confused and shapeless appearance ; but, when the several parts are judiciously selected, and diffused through their regular channels, makes glad the heart of man, and enriches the universe with the abundance of its treasures.

C H A P.

C H A P. VI.

"Jus Honorarium,"—*derived from the Edicts of the Magistrates.—Prætors.—Ædiles.—Censors.—Dictators.—Extinction of the Republican Government.*

OUR last attempt was, to consider the three great constitutional sources of the written laws, so long as the republican government preserved its vigor. But, as the aid of magistrates was likewise necessary, to give them activity, and apply them to the particular purposes for which they were made, this occasionally introduced another species of laws, of inferior authority, indeed, with respect to the enacting power, though indulged with all the effects of law, in consideration of their utility.

This branch of Roman jurisprudence is well known under the name of "Jus Honorarium;" because founded upon the edicts of the Prætors, and other principal magistrates, "qui honores gerunt". Under the regal government, jurisdiction of every kind, criminal as well as civil, was in the hands of the king, from whom it was transferred, in the same state, to the consuls. But the Valerian law, first proposed by Poplicola, and renewed, in future times, by several others of the same patriotic family¹, soon stripped them of the former part, and left them only the right of judging in civil causes. The plebeians, however, having obtained a share in the consular dignity, the patricians, by the advice of Camillus, created a new magistrate, to whom they gave the name of Prætor; and confined his province wholly to the courts of civil judicature².

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VI.

"Jus Honorarium."

A. U. C.
387.
Prætor.¹ I. 1. 2. 7. D. 1. 2. 2. 10.

2. 2. 16.

² Ros. Ant. Rom. 8. 2. Muel. in D. 1. ³ D. 1. 2. 2. 27.

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This title was derived "a praeundo," and, in its general sense, was equally applicable to the consuls⁴, and every other officer who was invested with any supreme command⁵; military as well, as civil⁶; though it was more usually understood of this great *judicial* magistrate. The pretence for this appointment was, that the consuls were too much engaged in other affairs, both foreign and domestic, to attend to the private disputes of individuals.

"Præfectus
Urbi."

Avocations of this kind were indeed so frequent and unavoidable in a state, whose attention was wholly turned to military enterprises, that, from the earliest period of the constitution, it was found necessary to create a particular officer, called "Præfectus Urbi," whose duty it was to administer justice in the absence of the king, or other chief magistrate⁷. This appointment was first made by Romulus himself⁸; continued by all his royal successors, and so on by the consuls, till the establishment of the prætorian office. After this, it was superseded and laid aside; except only when the consuls left the city to celebrate the "Feriæ Latinæ," on which occasion a "Præfectus Urbi" was appointed, not so much for a judicial, as a religious, purpose; and in this state it continued till the time of Augustus⁹; who, by the advice of Mæcenas, made it an ordinary and perpetual office, and gave the præfect joint power with the other magistrates, more particularly to hear appeals, and to preside in capital causes¹⁰.

⁴ Liv. 6. 42. & 7. 1.

⁵ Nov. 25. pr.

⁶ "Forte sub hoc tempus castellum evertere Prætor."

"Nescio quid cupiens."

Hor. Epist. 2. 2. 34.

⁷ D. 1. 2. 2. 33. & Muel. ib.

⁸ Tacit. 6. 10. & 11. Ros. Ant. Rom. 7. 15.

⁹ Suet. in Aug. 37. Dio Cass. 52. 323. Ros. Ant. Rom. 7. 14.

¹⁰ "Omnia omnino crimina præfectura urbis sibi vindicavit; nec tantum ea, quæ intra urbem admittuntur, verum ea quoque quæ extra urbem, intra Italiam." D. 1. 12. pr. & per tot.

Fair and plausible as the reasons certainly were for the creation of the prætor, the real design of the patricians was to check the growing power of the commons, and to secure so important a branch of the sovereignty to themselves. The plebeians, jealous of every monopoly of honor, would not suffer it to be long engrossed in the hands of the nobility; but, about thirty years after its first institution, opened their own way to the prætorian, as well as consular, chair, by the advancement of Quintus Publilius Philo, a plebeian of exemplary merit¹¹.

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A. U. C.
416.

Originally, no more than one prætor was appointed. But, as the splendor and reputation of this illustrious city daily drew to it a vast conflux of strangers, the judicial business increased, beyond the power of a single magistrate to dispatch. This demanded, therefore, the creation of a second, to preside over the causes of foreigners¹²; from whence he was called "Prætor Peregrinus," to distinguish him from the former, who, from the particular objects of his magistracy, was styled "Urbanus¹³." When the empire received a further augmentation from the conquered provinces, each of these was allowed its provincial judge, with similar title and power¹⁴.

A. U. C.
508.

Another century introduced a new refinement upon this institution. As the objects of judicature, both criminal and civil, multiplied apace, and a great variety of new causes arose, very distinct in their nature from each other; for the more easy and expeditious administration of justice, it was found necessary to throw them into distinct classes, called "Quæstiones;" and to assign particular jurisdictions, and judges, to each, who were intitled Prætors and Quæstors¹⁵. These were obliged to exercise their respective

A. U. C.
604.

Quæstors.

¹¹ Liv. 8. 15.

¹² D. 1. 2. 2. 28.

¹³ Grav. O. J. 1. 35.

¹⁴ D. 1. 2. 2. 32. Grav. O. J. 1. 36. &

¹⁵ 37. Ref. Ant. Rom. 7. 43.

¹⁶ Ref. Ant. Rom. 9. 18.

The nature and extent of these jurisdictions belong to the history of the Roman judicature; a very curious and interesting subject, which will require a particular and minute discussion, and may possibly appear, at some future time, in a distinct treatise.

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II.

Prætors.

jurisdictions within the city, for the space of one year; after which, they were dismissed into their several provinces, under the character of Prætors. These great officers, of whatever rank or denomination, were first elected by the people, in the "comitia centuriata;" but the right of assigning them to their particular provinces, belonged to the senate.

Prætorian
Edicts.

The prætorian edicts, which constitute that branch of the old civil law, now under consideration, were certain rules or forms, published by every prætor at the entrance upon his office, on the calends of January, signifying the method whereby he proposed to administer justice during that year¹⁶. These were hung up in the public court in a white table¹⁷, for the inspection of suitors and practitioners; but the authority of them lasted no longer than the office itself, unless they received a fresh ratification from the successor; and, in that case, they were called "Edicta Translatitia"¹⁸.

The prætor had no power to abrogate or alter the laws, but only to temper them with equity; to apply them to the particular cases before him, according to his own ideas of justice; and to supply whatever was wanting, to give them their full and proper effect¹⁹. His edicts, therefore, were considered only as the voice of the law²⁰, but not law in its most comprehensive meaning, unless they happened to be adopted and continued by succeeding magistrates; under which qualified character only, they are considered by Justinian himself²¹. But, notwithstanding their inferiority of rank in the scale of legisla-

¹⁶ Masc. de Sect. Sab. & Proc. 7.

To these Cicero alludes, "Cum magistratum inieris, et in concionem ascenderis, est tibi edicendum quæ sis observaturus in jure dicendo." De Fin. 2. 22.

¹⁷ "Album Prætoris."

¹⁸ "Sed in re tam usitatâ," says Cicero, "satis est ostendere omnes antea ita jus dixisse, et hoc, vetus edictum, translatitium-

"que esse." In Verr. 1. 44.

¹⁹ "Jus prætorium est, quod prætores introduxerunt, vel supplendi, vel corrigendi juris civilis gratia." D. 1. 1. 7. 1.

²⁰ "Nam et ipsum Jus Honorarium viva vox est juris civilis." D. 1. 1. 8.

²¹ "Non modicam obtinent juris auctoritatem." I. 1. 2. 7.

tion, they were yet held in the highest esteem by some of the greatest princes and statesmen in after-times, and by none more than himself; as appears from his inserting so large a number of them in the Digest.

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In process of time, indeed, as the age grew more corrupt, and as these judges were more intent upon their own private views and emoluments, than upon a punctual and faithful administration of justice, they were very apt to vary even from their own edicts, when it happened to suit the convenience and interest of their friends or themselves. This opened a door to many shameful acts of injustice, and once more called forth that truly patriotic tribune, Caius Cornelius, under whose influence a law was enacted, to oblige the prætors to adhere to certain established rules; and not to depart from those which they themselves had laid down, at the entrance upon their respective magistracies²². An effectual stop being now put to this dangerous species of corruption, from henceforward the prætorian edicts acquired uniformity and consistency; they obtained an honorable place in the general system of jurisprudence, and were thought worthy of being studied, and illustrated with comments, by some of the ablest professors of the law in the time of Cicero²³.

²² "Aliam deinde legem Cornelius, etfi
" nemo repugnare ausus est, multis tamen
" invidiis tulit, ut prætores ex edictis suis
" perpetuis jus dicerent. Quæ res tum gra-
" tiam ambitionis prætoribus, qui varie jus
" dicere assueverant, fuitulit." Asc. Pæd.
in Fragm. Cic. Orat. I. pro Corn.

In the following passage of the Greek
historian, the causes of this law are set forth
in a more particular manner: Και ουτως εκει-
νη τε δημοκρατια, και ετεροι τοιοιδοι οι στρατηγοι
παυσις τα δικαία καδ' α δικαστη μιν αυτοις,
συγγραφοντες εξιδιδισαι. ου γαρ πω παρτα τα δικαιω-
ματα, α περι τα συμβολαία διέτακτο, ποιοιεν ουτε

ισαπαξ τουτ' ποιοιεν, ουτε τα γραφιντα ετηρου-
αλλα πολλάνκις αυτα μετεγραφοι, και συχρα η του-
τη προς χάριν η και κατ' εχθραν τινω, ωσπερ ειπες,
εγιντο. συγγραφο (sc. Cornelius), κατ' αρχας τε
ευδης αυτους τα δικαία, δις χρησονται, προλεγειν,
και μηδεν απ' αυτων παραρρηται. Dio Cass. 36.
23.

Some writers (Ros. Ant. Rom. 8. 5.) as-
cribe this law to L. Cornelius Sylla the
dictator, but certainly without foundation.

²³ Hopp. Vinn. et Hein. in I. 1. 2. 7.
Grav. O. J. 1. 35—37. Hopp. præcog. Jur.
1. 25.—18. Tayl. tit. Prætor.

BOOK
II.Plebeian
Ædiles.
A. U. C.
260.

Though the "jus honorarium" was principally founded upon the prætorian edicts, it was not confined to those only; as many other magistrates of inferior rank had their jurisdictions, limited to the nature and design of their respective institutions. The chief of these were the Ædiles, at first not more than two in number, elected out of the commons only, and called therefore, "Ædiles Plebis". Their original duty was to assist the tribunes in the execution of their office; to take cognizance of such causes as were particularly referred to their judgment; and to superintend the sacred edifices, the public places, and the markets.

A. U. C.
387.Curule
Ædiles.

Towards the close of the following century, when the commons had carried their favorite point, of having a consul elected out of their own body, the senate decreed public games, in honor of the reconciliation which had taken place upon that occasion. But, as the ædiles refused to bear any part in the conduct of the ceremony, several of the patrician youth voluntarily offered their services, in honor of the gods. Upon this, two more ædiles were created out of the noble families, and were dignified with ivory chairs; from whence they were called "Ædiles Curules". Their business was to direct the public games; to inspect the repairs and ornaments of the temples, theatres, and all other places of entertainment; and in

²⁴ Dion. Hal. 6. 90. "Itemque ut essent qui ædibus præessent, in quibus omnia scita sua plebs deferebat; duos ex plebe constituerunt: qui etiam ædiles appellati sunt." D. 1. 2. 21. & Muel. ib. Ros. Ant. Rom. 7. 24. Grav. O. J. 1. 39.

²⁵ "Ita ab diuturna ira tandem in concordiam redactis ordinibus, quum dignam eam rem senatus censeret esse, meritoque id, si quando unquam alias, Deum immortalium causa libenter facturos fore ut Ludi Maximi fierent, et dies unus ad triduum adjiceretur;

"recusantibus id munus ædilibus plebis, conclamatum a patriciis est juvenibus, se id honoris, Deum immortalium causa libenter acturos, ut ædiles fierent. Quibus quum ab universis gratiæ actæ essent, factum S. C. ut duos viros ædiles ex patribus Dilectorum populum rogaret." Liv. 6. 42. & 7. 1. "Tunc ut aliquo pluris patres haberent, placuit duos ex numero patrum constitui, ita facti sunt Ædiles Curules." D. 1. 2. 26. & Muel. ib.

concurrence

concurrence with the Plebeian *Ædiles*, they were general masters and conservators of the police ²⁶. In the later times of the republic, Julius Cæsar added two more, out of the patricians likewise, whose only duty was, to take care that the city was properly supplied with corn, and to regulate all matters that concerned the sale of it; on which account they were distinguished by the title of "*Ædiles Cereales*" ²⁷. These officers, having all their respective courts, had a consequent right of making decrees, relative to those matters which were the proper objects of their jurisdiction²⁸; many of which still appear in the Digest, and make a considerable and useful part of that collection ²⁹.

C H A P.
VI.A. U. C.
709.

The Censors, likewise, of whose institution we have already spoken ³⁰, had an authority, in many instances concurrent with, if not paramount to, that of the *Ædiles*; particularly, over the temples, streets, aqueducts, and other public edifices ³¹. By virtue of this they frequently used to issue their writs, or orders, for their several repairs; which precepts are known in the antient writers by the name of "*Leges Censoriæ*," and seem to stand upon much the same footing with the *Ædilitian Laws* ³².

Censors.

It would be superfluous to enter into a minute detail of the other inferior offices of this great and complicated republic, such an undertaking rather belonging to the province of the antiquary. It is sufficient, therefore, to observe at present, that every jurisdiction was attended with the privilege of making rules for the due regu-

²⁶ Cic. de LL. 3. 3. Ros. Ant. Rom. 7. & Vinn. ib.

²⁵ Grav. O. J. 1. 39.

²⁹ D. 21. 1.

²⁷ Ros. & Grav. ut sup. D. 1. 2. 2. 32. & Muel. ib.

³⁰ P. 30.

²⁸ "Proponabant et *Ædiles Curules* edictum de quibusdam causis, quod et ipsam
"Juris Honorarii portio est." I. 1. 2. 7.

³¹ Cic. de LL. 3. 3. Muel. in D. 1. 2. 2.

³² Tayl. p. 182. & 216.

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ation of itself: all which, in their several degrees, constituted part of the "Jus Honorarium," under the general restrictions above-mentioned.

Dictator.

But beside these established magistrates, whose powers were circumscribed within certain known limits, another used sometimes to be introduced, out of the regular and ordinary course of the constitution; who, for the short time of his continuance, superseded, if not annihilated, every other power whatsoever. This was the Dictator²³. The sudden appearance of so great a potentate, in the midst of a land of liberty, is not easily reconcileable, at first sight, with the inveterate prejudices of mankind in general against arbitrary power: and yet it is a certain truth, that, by the unanimous sense of the whole nation, no other adequate and effectual remedy could ever be discovered, against the frequent, and otherwise incurable, distempers of a distracted and tumultuous government²⁴. For this we need only appeal to the most authentic histories of those ages, in which it will be seen, that, for several succeeding centuries, the struggles between the Romans and their foreign enemies for dominion, and between the different orders among themselves for superiority, were so violent and indecisive, that nothing less than an absolute power could repel the attacks of the common enemy, or assuage the civil commotions within the bosom of the state itself.

When the salutary effects of this short and transitory despotism were fully known, by repeated experience, there is no wonder that it should be so often revived, in cases of extremity. But that a people,

²³ Dion. Hal. 5. 70. ad fin. Liv. 2. 18. D. 1. 2. 2. 18. & Muel. ib. Ros. Ant. Rom. 7. 17.

²⁴ To this we have the testimony of the great and judicious antiquary (Dion. Hal. 5. 77.), who, in his elegant and accurate account of the first institution of the dicta-

torial office, and of the good effects arising from the proper exercise of it, observes:

Ὡς' ἅπασιν παραγρηται τῇ αὐτῇ δόξαι, ὅτι μὴ βουδνα παντος ἐστὶ ἀναστῆ κακῆ, καὶ τὸ αὐτῆς στερμας ἐλατῆ, ὅταν ἀπορρίπται ἅπασιν ἡ κατὰ τοὺς νόμους, ἢ τοῦ δικτατορὸς ἀρχῆς.

glowing

glowing with the flame of liberty, and exasperated against a haughty and tyrannical nobility, by many recent instances of the most provoking cruelty, should ever have submitted, at first, to so dangerous an innovation, is a paradox, that can only be explained by the natural weakness, caprice, and instability of popular government; and by its utter inability of supplying a remedy, from itself, against those morbid and cankerous humors, which daily engender within its own bowels.

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Ten years had scarcely elapsed, since the whole Roman nation had risen, as one man, against the odious family of the Tarquins, and, together with the tyrant, had banished even the very name of his office: and yet, at the very instant when the same detested exiles were making a violent effort to recover their lost dignity, at the head of a most formidable confederacy of all the Italian states, threatening the total destruction of their infant republic, the self-same people fled, at once, for refuge to the arms of a new and untried power, much more absolute than any that had been ever known to their constitution from its very foundation.

The plebeians, justly irritated by the severity of their creditors, were, at that instant, in a state of open rebellion, and positively refused to enlist, or to give the least assistance against the enemy, then at their gates. The Valerian law, so lately passed, whereby a right of appeal in criminal cases was vested in the body of the people, had entirely deprived the consuls of their original coercive power; so that they could neither suppress the tumult, nor punish the seditious. With a view, therefore, of putting a speedy stop to this ruinous invasion, the senate thought it a more eligible expedient to submit to a tyranny of their own creation¹⁵, than to see the city itself, perhaps, totally destroyed, by the obstinacy and disobedience of its inferior

A. U. C.
255.

¹⁵ These were some of the causes, as the historian very elegantly remarks: Τα αναγκάζοντα αυτην, επι τη καταλυσει του τυραννικου πολιμου αυθαιρτοι υπομιναι τυραννδα. Dion, Hal. 5. 10.

members, and by the fatal delays arising from their civil differences.

A decree was accordingly passed³⁶, to oblige the consuls, and all other magistrates whatsoever, to lay down their offices; and that some single person, to be chosen by the senate, and approved by the people, should be invested with the sole sovereign authority, for a space of time not exceeding six months, and with greater power (but without specifying in what degree) than the consuls. It should be remembered, that the tribunes were not then in being; but, after their institution, that was the only office of the state not affected by the dictatorship, till the time of Sylla, who effectually humbled their insolence, by depriving them of many of their fundamental privileges; and more especially, by a decree, which prohibited all such as had been tribunes, from being advanced to any higher dignity³⁷. This discouraged all the patrician families from coveting that popular office for the future; and was some security to the aristocratical faction, against those formidable attacks, which persons of noble birth, and superior talents, were more capable of making upon it.

Whether the senate really understood the nature and extent of that power which they meant to confer, may be a matter of some doubt. They might, perhaps, as far as appears to the contrary, have maturely considered every consequence of this singular stretch of policy. In those obscure days of poverty and content, the dreams of conquest and dominion had not yet disturbed the repose of this

³⁶ Λαρκίον και Κλοδίου τους τότε ύπατειοντας αποδιδου την εξουσιαν, και ει τις αλλος αρχην τινα ειχει, η παραγωγαιων κοινω επιμελειω· ινα δε αυδρα, ει αν η βουλη περιληφται, και ο δημος επιψηφισηται, την απαντων εξουσιαν παραλαβοντα, αρχην μη ωλειοτα χρονω εξαμηνου, κριντοια εξουσιαν ιχου· τα των ύπατων. Dion. Hal. 5. 70.

³⁷ Την δε των δημαρχων αρχην ισα και αυταυ, ασθενεσταιν αποσφραϊς, και τομω κολουσας μηδεμιας αλλησ τοι δημαρχοι αρχην ειτι αρχην, διο και παλιν η δοξης η γινους ανθρωπωνεμτοι την αρχην εις το μαλλον εξετρεποηο. Appian. de Bell. Civ. p. 413. edit. Henz Steph. 1592.

infant and feeble republic; neither had the disinterested love of their country as yet received the taint of wealth and ambition. Absolute power, therefore, surrounded only with toil and danger, could have no other charms to render it an object of desire in their eyes, but the sole prospect of its becoming the instrument of restoring peace and order to a distracted government. This heroic purity of sentiment, which was the peculiar character of that plain and virtuous age, seemed to justify an implicit confidence in the honor and integrity of the worthy person, whom they meant to raise to that important, but perilous, dignity; and might reasonably induce them to conclude, that he would be as readily disposed to resign it again, as they were to force it upon him, as soon as ever the end of his appointment was answered: they probably, therefore, saw no hazard at all in the experiment. But the case of the people was totally different. They fell in with the views of the senate, without hesitation or inquiry; and submitted, quite contentedly, to their new sovereign, whose political life, they understood, was limited to so very short a space, and the extent of whose power, though acknowledged to be great, remained yet wholly undefined³⁸.

In consequence of this decree of the senate, Titus Lartius, one of the consuls, was named the first dictator. There was full scope left him to assume what power he pleased, and he became, at one instant, an absolute monarch³⁹. The Valerian law being now suspended, he was made the sole arbiter of life and death, of war and peace; and, in short, was himself the constitution, without being liable to be censured, or called to account, after the expiration of his office, for any thing he had done in it⁴⁰.

The

³⁸ Τούτο αγνοήσαντες ἢ ἔχει δυνάμει οἱ δημοτικοί, ψηφίζονται κυρία εἶναι τὰ δεξάντα τῇ βουλῇ, ἢ δὲ ἀπὸ κρίσεως ἀρχῇ τῆς κατὰ νόμους τυρανίδος· τῇ τε αἵρεσιν τοῦ μέλλοντος ἀρχῆς, τοῖς ἐκ τοῦ συνδεδεμένου συνηγερθεῖσιν αὐτοῖς ἐφ' ἑαυτῶν βουλευνομένοις ποιεῖσθαι. Dion. Hal. 5. 70.

³⁹ Οὗτος πρῶτος ἐν Ρώμῃ μονάρχος ἀπεδείχθη, πολέμου τε καὶ εἰρήνης, καὶ παντός ἄλλου πραγματος αυτοκράτωρ. Dion. 5. 73.

⁴⁰ Ἐκρίνε (ἰ. ε. ἡ βουλὴ) τὴν μὲν ὑπάτικην ἐξουσίαν αἰτῶν κατὰ τὸ παρὸν, ἱστῶν δὲ τινὰ ἀρχὴν ἀποδίδαι, πολέμου τε καὶ εἰρήνης καὶ παντός ἄλλου πραγματος

The appointment fortunately answered the most sanguine expectations of its authors. The sedition was appeased, the enemy dispersed, and Lartius, returning from his expedition, voluntarily resigned his office before the time legally fixed for its expiration; instantly restoring every part of the government to its former state; with the singular satisfaction, of having brought about these happy events, without the death, exile, or severe punishment, of a single Roman citizen ⁴¹.

This flattering example made such a lasting impression upon all his successors in the same high office, that though the various exigencies of the state required a frequent suspension of the ordinary course of administration, so that there were more than fourscore appointments ⁴² of the same kind, for various purposes, during the three centuries immediately following ⁴³, yet there is not a single instance of the least abuse of power recorded of any one of them ⁴⁴. On the contrary, they all made a conscience of exercising it with the greatest mildness and moderation; waiting for no other reward, beside the satisfaction arising from a faithful discharge of their duty, and the honor of being thought worthy of devoting their lives and best services to the welfare of their country; the strongest proof that can possibly be given of the real existence of that disinterested heroic virtue, for which the Romans were so justly celebrated in more antient times; and which, from the height whereto it was carried, has been often thought problematical and imaginary.

πραγματες κυριαν, αυτοκρατορα και αυτοπυδουσι αν
αν βουληται και γραξ. (Dion. Hal. 5. 70.)

And further, Τη ισχυρανον (αρχον) κρινει επι
τα πραγματα παραγαγι, η παντας εμμελει εξει
υφ' αυτη τους νομους. Ib. § 73.

⁴¹ Ουτε απειλιναις ουδεναι Ρωμαιων, ουτε εξιλασαις
της πατριδος, ουτε αλλη συμφορα βαρυνει περιβαλιν
ουδεναι. Ib. § 70.

⁴² See the Capitoline marbles, as printed
in Hooke's Roman History, and in various

publications, both Latin and English.

⁴³ Viz. ab A. U. C. 255 ad 551.

⁴⁴ Ουτος δ ζηλος, απ' εκεινου του ανδρος αρχαιμε-
νος, απασι παρμεναι τοις λαμβανουσιν την αυτην
εξουσιαν, αχρι της τριτης προ ημων γενιας. Ουδεναι γου-
ν εκ της εγορας παρληπφαιεν, δε ου μετρινος αυτη και
πολιτικως εχρησατο, πολλακις αναγκασθεις της
πολεως καταλυσαι τας νομιμους αρχας, και παντα
ποιησαι τα πραγματα υφ' ην. Dion. Hal. Ib.
§ 77.

Beside

Beside the nomination of a dictator, which was the most usual resource in cases of difficulty, it was not uncommon, when any violent sedition arose, or any dangerous conspiracy was apprehended, for the senate to make a decree, "Ut videant consules, ne quid respublica detrimenti capiat"; by which the consuls, and likewise other chief magistrates, as the prætors and tribunes, were immediately empowered to seize and punish any suspicious and guilty persons, by virtue of their own authority, notwithstanding the Valerian law. Of this we find frequent mention in the writers of those times, particularly in relation to the Catilinarian conspiracy, in which Cicero so much distinguished himself by his vigilance and activity.

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From these, and several other instances, we may learn, that the *Valerian law* was a kind of palladium of Roman, as the *habeas corpus* act is of English, liberty; and they seem both to have a similar use, that is, to secure the person of the subject from unjust and causeless imprisonment; and, therefore, though some very critical juncture may warrant a temporary suspension; yet the wanton exercise of this suspending power may be attended with the most fatal consequences, both to public and private freedom.

From the uniform policy of the Roman people upon these trying occasions, for a long series of years, we deduce likewise a clear and convincing argument of the natural imperfection and debility of democratical government, which the ignorance and prejudices of vulgar minds have, by a strange abuse of words, in a peculiar manner, called *free*; a title to which, of all others, it has the least pretensions. When a state is unable to protect the rights and liberties of her subjects by principles of her *own*; or to find a cure for the many occasional disorders that disturb her tranquillity, out of her

⁴³ Liv. 3. 4.

⁴⁴ *habita est.*

⁴⁵ *Quæ forma,* says the author, "se-

⁴⁶ Sall. in Bell. Cat. Cic. Orat. passim.

⁴⁷ *natus-consulti ultimæ semper necessitatis*

Cæf. de Bell. Civ. 1. 5.

own internal resources; when she is obliged, in every case of danger and extremity, to implore the aid of some unappellable, transcendent power, to dispel the storm, then lowering over her head; and with a peremptory "Quos ego"—to allay the tempest of popular discord; when, I say, we see her reduced to this mortifying dilemma, by what construction of language can that constitution be called *free*?

Let not this short reflexion upon a too popular error be charged with the slightest tendency towards the opposite extreme; or with the remotest desire to soften the terrific visage of arbitrary power; a power, which every one of true feeling will ever hold in the utmost detestation, as dangerous and fatal, in the highest degree, to the dearest interests of humanity. But the most momentous concerns of this world are governed by contradictions; and the rankest poisons, when judiciously applied, are often the most sovereign restoratives of a diseased habit. While, therefore, the real friend of true political liberty looks with pity upon any constitution, so naturally infirm, as to require the frequent repetition of so violent a medicine; he cannot help congratulating that people, who, at the instant they were obliged to have recourse to the remedy, were sure of finding sufficient virtue and moderation in those whom they called upon to administer it, to correct its malignant, and make the best use of its healing, qualities.

The same instrument may too easily be employed to opposite purposes; and the use to which it is applied, is that chiefly which makes it either beneficial or pernicious⁴⁷. For the first three centuries after its institution, the dictatorship was the sanctuary of the whole people. At the close of that period, when the good for-

⁴⁷ Καλὴ μὲν γὰρ ἀπάντη καὶ συμφέρουσα θάλασσαν ἀρετήν. τοῦτου δ' ἡ φύσις αὐτῆς, ἀντιστάται τοῖς χρηματοῖς, ὅταν τὶς αὐτοῖς χρῆσται. διὸ καὶ τοῖς ἀγαθοῖς ἀπάσι καὶ κηρας συμφέρουσι. καλὴς αἰσχρὰ δὲ καὶ ἀσυμφέρουσα, ὅταν αὐτοῖς. Dion. Hal. 5. 77.

tune of this brave and flourishing commonwealth had secured to her a decisive superiority over the rest of her neighbours; when the ferment of popular jealousy had subsided, and each order of the state had learned to move within its own proper sphere; this great office, being then no longer necessary, sunk into disuse for an hundred and twenty years⁴⁸. Happy, had it so continued! But when the people once became intoxicated with glory, wealth, and prosperity, and began to loath the sweets of orderly government, then was it instantly converted into the most intolerable tyranny⁴⁹.

By a law passed in the general assembly of the people themselves, at the instance of the "Inter-rex," Valerius Flaccus, the famous Cornelius Sylla was, by a most unprecedented compliment, created dictator for a time unlimited; all his former acts, however irregular and unconstitutional, were ratified; and a full power was given him over the lives and fortunes of his fellow-subjects⁵⁰; a power

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⁴⁸ Ab A. U. C. 551 ad 671, i. e. from the close of the second Punic war, when, according to the historian, "Discordiarum et certaminis utrinque finis fuit, secundum bellum Punicum," (Sall. Hist. Fragm. 1.) to the time of Sylla; who Δικτατωρα μιν Ιαυτον ανηγορευσε, δ' εως Ικατον ηικοσι τωτο το γινος της αρχης αναλαβων. Plut. in Sylla, p. 91. "Dictator creatus (sc. Sylla) (cujus honoris usurpatio per annos centum viginti intermissa. Nam proximus post annum, quam Hannibal Italia excefferat: ut appareat populum Romanum usum dictatoris non tam desiderasse, quam timuisse potestatem imperii, quo priores ad vindicandam maximis periculis rempublicam usi fuerant) immodicæ crudelitatis licentia usus est." Vell. Pat. 2. 28.

⁴⁹ Ωςτε τοτε πρωτον αισθανθαι Ρωμαιους, ο τον αλλος απαντα χρονον ηγρουση, οτι τυραννις εστι η

δικτατωρος αρχη. And a little lower, after an account of the tyranny of Sylla, he adds, δια ταυτα ημισηδη, και δεινοι φραση το του δικτατωρος ονομα. Dion. Hal. 5. 77.

⁵⁰ Εψηφισθη δε αυτη παντων αδια των γενομενων. προς δε το μαλλον, εξουσια θανατου, δημευστικης, πληρωχικης, κτιστικης, πορνητικης, αφαιριστικης βασιλειας, ο βυλοιο χαρισσασθαι. Plut. in Sylla, p. 91. Of this we find Cicero complaining, in several parts of his works. Having given many instances of unjust laws, he adds, "Nihilo, credo magis illa (sc. justa), quam interrex noster tulit, ut dictator, quem vellet civium, indicta causa, impune posset occidere." (De LL. 1. 15.) And in another place, "Omnium legum iniquissimam, dissimulamque legis, esse arbitror eam, quam Lucius Flaccus, interrex, de Sylla tulit, ut omnia, quæcunque ille fecisset esse rata. Nam cum cæteris in civitatibus,

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power which he exercised with the severity of a tyrant, and abdicated with the serenity of a philosopher⁵¹. But it was too late, by this act of affected moderation, to prevent the fatal contagion of his former example. He left far too many faithful imitators of his violence and usurpations, but not a single one of his voluntary humiliation. A self-denying ordinance was not likely to gain much ground, in those ages of corruption, voluptuousness, and iniquity. The people themselves, indeed, were grown weary of a constitution, under which, with the form and semblance of freedom, they suffered every evil both of anarchy and despotism. They thought one tyrant more tolerable than a thousand; and, therefore, were easily drawn in to aid the ambitious views of those aspiring potentates, who successively grasped at the supreme command; and insensibly co-operated with them in forging those chains, which were to hold both themselves and their posterity in everlasting bondage⁵².

May this melancholy and affecting example humble the insolence of republican licentiousness! May it point out to all factious op-

" civitatibus, tyrannis institutis, leges omnes extinguantur atque tollantur, hic reipublica tyrannum lege constituit. Est invidiosa lex, ut dixi: veruntamen habet excusationem. Non enim videtur hominibus lex esse, sed temporis." Pro Leg. Agr. 3. 2.

Another historian, speaking of the same law, observes, Ρωμαίοι δ' ἔχ' ἰκοίης μιν, ὅδε καλὰ νομοὶ εἰσι χειροτονοῦντες; ὅδε, ὃ δ' ἐπὶ σφισιν ἡγούμενοι τοὶ ἔργοι ὅλως, αὖ δὲ τῇ πάντων ἀπορίᾳ τὴν ὑποκρίσιν τῆς χειροτονιας, ὥς εὐθυδρίας εἰκόνα καὶ προσχρημα, ἀσπασάμενοι, χειροτονοῦσι τὸν Σύλλα, ἐς ἵσον θιλοῦσι τυράννοι αὐτοκράτορες. τυράννος μιν γὰρ ἢ τῇ δικτατορίᾳ ἀρχῇ καὶ πάλαι ὀλίγῃ χρόνῳ ἐφύζομεν, τότε δὲ παρῶν ἐς αἰετοῖς ἐλθούσα, τυράννος ἐγγίγτο ἐνταῦθα—ὅντω μιν δὲ Ρωμαῖοι, βασιλευσιν ὑπὲρ τὰς ἰκατοὶ ολυμπιάδας χρησάμενοι, ἐπὶ δ' ἰκτανοῖς δημοκρατίᾳ τε καὶ ὑπάλαις ἐτησίαις προσηλαῖς

ἐς ἄλλας ἰκατὸν ολυμπιάδας, αὐδὴς ἐπικύρωτο βασιλείας. Appian, p. 412.

⁵¹ Appian, p. 415. Plut. in Sylla, p. 91-93.

⁵² Sallust has painted this universal degeneracy in most beautiful and warm coloring, where, speaking of the prevailing avarice and venality of the same ages, he adds, "Ita paulatim populus, qui dominus erat, et cunctis gentibus imperitabat, dilapsus est, et pro communi imperio, privatim sibi quisque servitutem peperit. Hæc igitur multitudo, primum malis moribus imbuta, deinde in artes, vitasque varias dispalata, nullo modo inter se congruens, parum mihi quidem idonea videtur ad capeffendam rempublicam." Ad Cæf. de rep. ord. Ep. 1. vulgò 2.

posers

posers of lawful authority, the very thin partitions which divide the extremes of liberty from the extremes of tyranny; and convince them, that without the restraint, no less than the protection, of regular government, men would daily worry and devour each other, like the savage beasts of the desert! May it dispose them to look up with reverence, duty, and gratitude, to that constitution of which they are members; a constitution that is the pride of civil policy; and under whose wise and benign auspices, they must be their own greatest enemies, if they do not enjoy every blessing that man can reasonably expect, in the compound and imperfect state of human society.

© H A P.
VI.

THE
H I S T O R Y
OF THE
LEGAL POLITY of the ROMAN STATE;
AND OF THE
RISE, PROGRESS, and EXTENT
OF THE
R O M A N L A W S.

B O O K . III.

The Imperial Government, so long as the Seat of Empire
continued at Rome'.

C H A P. I.

*An Inquiry into the Causes of this great Revolution.—Origin and
Progress of the Agrarian Laws.—Decline of the Democracy.—In-
crease of the Aristocracy.*

THE third period of the legal and political history of Rome
opened with a melancholy scene of confusion and dismay.
The features of the ancient commonwealth were cruelly disfigured ;
though

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CHAP. I.
Third Pe-
riod.

* The Author, desirous of setting the na- republic, together with the causes that led
ture of that government which succeeded the thereto, in the clearest light in his power,
sensible

B O O K
III.

though it is difficult to say, what new form it then assumed; or indeed, whether the authors of these important changes had any particular form in contemplation at all. Thus much only is certain, that it went on from one stage of corruption to another; retaining several properties of every species of its former constitution, without the perfections of any one: but the most predominant ingredients were military, the sure consequences of which were misrule and violence. In fact, as the disorders of the state, and the irregularities of administration, daily multiplied, the army became, in the end, the sole paramount power over the whole empire. The emperors were more abject slaves of the soldiery, than the people of the emperors; and some, even of the best-deserving of these princes, were suddenly elevated to the throne, and again, as suddenly, deposed and massacred, at the momentary caprice of the lawless and turbulent Prætorian cohorts.

Causes leading to these revolutions.

A surprising combination of events, in the highest degree flattering to the hopes of an aspiring people, preceded these fatal revolutions; and, from the most exalted eminence of earthly felicity, plunged them into the abyss of irretrievable perdition.

So long as the dread of their potent rivals kept them upon their guard, and confined their views within the natural limits of the Italian continent, they trod with patience in the steps of their plain and honest ancestors¹. Proud of their hereditary poverty, they were rich only

sensible likewise both of the variety and opposition of sentiment, which have hitherto prevailed upon this subject, has carefully examined the most approved records of antiquity; endeavouring, throughout, to support his own observations by the sanction of some writer of credit and veracity. This, he hopes, will bring the several facts referred to more immediately within the view of his learned readers; and be received as a sufficient apology, for having multiplied his quotations, so

much beyond the proportion observed in the preceeding books.

¹ "Cujus ætatis," says the historian, speaking of the character of the middle ages of the republic, "superiores centum anni, sancti, pii, et, ut diximus, auri, sine flagitio, sine scelere; dum sincera adhuc et innoxia pastoris illius sectæ integritas, dumque Pœnorum hostium imminens metus. disciplinam veterem continebat." Flor. 3. 12.

in affection towards their country. Their emulation was not vainly displayed in splendör³ and magnificence, but in the nobler exertions of valour and public spirit⁴.—But the virtue of Rome was buried in the wreck of Carthage.—When the vast influx of foreign wealth, and the fallacious charms of conquest, had once vitiated her mind, her primitive integrity and moderation, the surest pledges of her political happiness, were abandoned to the most insatiable avarice, and the most boundless ambition⁵.

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I.

Thus were the seeds of her trouble and decay sown at the same instant with those of her glory and prosperity⁶. The same hands, which assisted in extending her dominions, made them too bulky for the narrow genius of democracy to superintend and govern. The haughty victors, who had bound the monarchs of the East in chains, and had dictated conditions of obedience to the abject successors of Xerxes and Alexander, scorned to condescend to the same level with the vulgar herd, in the tribes and centuries; or to receive laws from an illiterate multitude of rustics and mechanics.

³ To the truth of this account, another elegant and well-informed writer bears the following testimony: "In duas partes ego civitatem divisam arbitror, sicut a majoribus accepi, in patres et plebem. Antea in patribus summa auctoritas erat, vis multo maxuma in plebe. Itaque sæpius in civitate secessio fuit, semperque nobilitatis opes diminutæ sunt, et jus populi amplificatum. Sed plebs eo libere agitabat, quia nullius potentia super leges erat; neque divitiis aut superbiam, sed bona fama, factisque fortibus nobilis ignobilem anteibat: nullius quisque in armis aut militia, nullius honestæ rei egens, satis sibi, sa-

tisque patriæ erat." Sall. ad Cæs. de rep. ord. Ep. 1.

⁴ "Illæ opes atque divitiæ afflixere sæculi mores; mercedemque vitiis suis, quasi sentina, rempublicam pessumdederunt." Flor. 3. 12.

⁵ "Quæ enim res alia furores civiles perit, quam nimia felicitas?" Flor. 3. 12. And again, "Jam pæne toto orbe pacato, majus erat imperium Romanum, quam ut ullis externis viribus extinguere posset. Itaque invidens fortuna principum gentium populo, ipsum illum in exitium suum armavit." And a little further, "Causa tantæ calamitatis eadem quem omnium, nimia felicitas." Flor. 4. 2.

While

While an over-bearing and tyrannical nobility persevered in destroying those principles of mutual confidence, which had heretofore been the life of their general union, and the steady guide, both to high and low, in the pursuit of one common interest; the people, lost to all sense of decent subordination, and well-tempered liberty, became insolent to those whom they despised; servile, to those they feared; and inconstant, even where they professed the warmest attachments. Driven about by every wind of sedition, they submitted to be the tools of those crafty seducers of their allegiance, and corrupters of their morals, a Cinna, Clodius, or Catiline; an infamous crew of profligate impostors, who turned patriotism into party; who assiduously cherished the flames of discord in the heart of the constitution; and exulted, with malicious joy, in the desolation themselves had caused.

These evils were heightened yet more by the perpetual dictators, and the two triumvirates, who sprang from the fermented humors of this distempered government; who disdained to obey those laws which they had the power to control; and made justice and policy the mere sport of faction and self-interest. Not content with having obliged the most powerful nations of the known world to do homage to the Roman eagle, each, for himself, coveted the supreme rule at home; and, by their irreconcilable animosities, made the streets of Rome to flow with the blood of her most virtuous citizens⁶.

These were some of the baleful effects of a too rapid current of success, that soon inspired the passion of universal empire; a passion no less fatal to the peace of those breasts that harboured it, than of

⁶ "Posteri centum anni, quos a Carthaginiis, Corinthi, Numantiaque excidiis, et Attali regis hereditate deduximus in Cæsarem et Pompeium, secutumque hos, de quo dicemus, Augustum, ut claritate rerum bellicarum magnifici, ita domesticis cladibus miseri et erubescendi." Flor. 3. 12.

the world, of which it was the object. An exemption from tribute, which the Romans enjoyed for more than a century², could not fail to impress upon their minds very fallacious ideas of the consequences of victory. Every new conquest served only to sharpen an appetite, which even the treasures of Asia, poured into the bosom of Rome, were unable to satisfy. Wealth, thus suddenly acquired, corrupted more than it enriched. By administering to the great the materials of luxury and effeminacy, it debauched every true principle of virtue and honor; and by tempting the necessities of the poor with the hopes of a speedier supply, withdrew them from the painful track of industry and economy, and rendered them idle, profligate, and venal.

The public good was now sacrificed, with great indifference, to the private views of the powerful; though the contest was not, who should govern, but who should plunder, the conquered provinces. Thus was the state daily exhausted, not indeed of its money, for in that it too much abounded; but of a treasure infinitely more precious, its native inhabitants; who eagerly followed the military train of every greedy consul or prætor; while the cultivation of their lands was given up to slaves and foreigners, who felt no joy in their fertility; who reaped no profit from their improvement; but, grown weary of their chains, while their cruel masters were gathering laurels in the wild regions of adventure, made the neglected capital tremble for its own existence. Happier, therefore, would it have been for this active people, to have confined their ambition

² i. e. From A. U. C. 586, when Paulus Æmilius brought into the public treasury the spoils of Macedon, to the consulship of Hirtius and Pansa, A. U. C. 710. "Omni Macedonum gaza, quæ fuit maxima, positus est Paulus: tantum in ænarium pecunie invexit, ut unius imperatoris præda

"finem attulerit tributorum." Cic. de Off. 2. 22. Ταῖς δὲ Μακεδοναῖς ἀραξίαις τῷ Αἰμίλιῳ δημοτικῶτάλῃ προσγεγραφοῖς χάρις ὑπὲρ τῶν πολλῶν, ὥς τοσούτων εἰς τὸ δημοσίον τότε χρημάτων ὑπ' αὐτοῦ τεθῆναι, ὥστε μὴ μὲν δεῖσθαι τοῦ δήμου ἀνισχυγίῳ, ἀλλὰ τῶν ἱερῶν καὶ Πανσῶν χρεῶν. Plut. in P. Æmil. p. 190,

BOOK
III.Origin and
progress of
the Agrarian
Laws.

to the bounds which Nature had set them; than, by comprehending such distant and extensive countries within the circle of their dominion, to have been enfeebled and consumed by their own strength⁸.

Of the numerous subjects of contention, which now began to interrupt the public harmony, none were more frequently renewed, nor more serious in their consequences, than such as concerned the division of landed property. It is hoped, therefore, that a more particular investigation of the progress of these memorable disputes will not be deemed an object altogether unworthy the curiosity of the reader.

As the Romans gradually extended their victorious arms over the weaker states of Italy, they were accustomed to take a certain portion of the conquered lands into their own possession; part of which was sold by auction, for the use of the public; and the rest divided among the poorer citizens, on the payment of a small quit-rent to the treasury, in acknowledgment of the tenure⁹.

For the better regulation of these distributions, various laws had been passed from time to time, under the title of *Agrarian*. The first of these was the *Cassian Law*; enacted not many years after the beginning of the consular government¹⁰; which was followed, at different periods, by many others of the same import¹¹; though

Cassian Law.
A. U. C.
266.

⁸ " Quippe sicut Galliam, Thraciam, Ciliciam, Cappadociam, uberrimas val-
diffimasque provincias, Armenios etiam,
et Britannos, ut non in usum, ita ad
imperii speciem magna nomina acquisiisse,
pulchrum atque decorum: ita eodem
tempore dimicasse domi cum civibus, fo-
ciis, mancipiis, gladiatoribus, totoque in-
ter se senatu, turpe atque miserandum.
Ac nescio an satius fuerit populo Ro-
mano, Sicilia et Africa contento fuisse,
aut his etiam ipsis carere, dominantibus in

" Italia sua, quam eo magnitudinis crescere,
ut viribus suis conficeretur." Flor. 3. 12.

⁹ Ῥωμαῖοι τῆς τῶν ἀστυγιστικῶν χωρῶν ὅσον ἐπι-
τιμοῖο πολέμῳ, τὴν μὲν ἐπιπρασκοῖ, τὴν δὲ ποιῶ-
μενοι δημοσίαν, ἐδίδουσαν ἡμαδαῖαι τοῖς αἰλημασι
καὶ ἀποροῖς τῶν πολιτῶν, ἀποφορὰς ἢ πολλὰς εἰς τὸ
δημοσίῳ τελεσθῆναι. Plut. in Tib. Grac. p. 365.
Ap. de Bell. Civ. p. 353.

¹⁰ Liv. 2. 41.

¹¹ A list of the chief of these is given by
Ros. Ant. Rom. 8. 10.

the introduction of them was commonly attended with riot and discontent¹².

C H A P.

I.

The comforts arising from the enjoyment of separate property are more apt to stimulate, than to satisfy, the appetite; and though a simplicity of manners, and a happy ignorance of the superfluities of life, may, for a while, restrain the importunities of the human passions, they will naturally rise in their demands, with the abilities of the state to indulge them. Cato the Censor, therefore, of honest and frugal memory, clearly foreseeing that Rome was hastening to corruption through her own greatness, vigorously opposed the increasing luxury of the age, both by his example and authority. For this he was rewarded with a statue, by the suffrages of a grateful people¹³; and yet, by a strange inconsistency, more common than accountable, in the contracted sphere of worldly politics, he suffered his inveterate prejudices against an unfortunate rival, to counteract his own zeal, and effectually to defeat his favorite plan of reformation. The destruction of Carthage eased Rome of her fears; and thus the malady grew every day worse, by the removal of the only check that could have prevented it.

The richer citizens getting possession of large tracts of waste land, and being confirmed in them by long prescription; adding to these likewise, either by force or purchase, the smaller pittance of their poor neighbours, by degrees became masters of territories instead of farms. As a further grievance, the management of these was often committed to the care of slaves; whereby the multiplication

¹² Thus says the historian, of the Cassian law: "Tum primum *Lex Agraria* promulgata est; nunquam deinde, usque ad hanc memoriam, sine maximis motibus rerum agitata." Liv. 2. 41 & 42.

¹³ The inscription does the highest honor to his memory; and is thus recorded by the

writer of his life: Ανδριαντα γυν αναδης (sc. ο δημοσ) η τε μεν της υγνιας, επιγραφη η της εργατηριας, υδι του θριαμβου τε Κατωνος, αλλ', οτι την Ρωμαιων πολυτητα συνεκλιμασεν και ετηρυσεν επι τα χειρα, τιμητης γινομενος, χρηταις αγωγαίς και σφροσιν ιδισμοίς και διδασκαλιας εις ορθον αυτης αποκατιστησι. Plut. in Cat. Maj. p. 352.

BOOK
III.Licinian
Law.
A. U. C.
377.

of the free inhabitants was impeded; such as remained were oppressed by penury, exactions, and military services; or, if left unemployed, were enervated by idleness, without lands of their own to occupy; and excluded the privilege of earning their bread upon those of others, by captives and foreigners¹⁴.

Such enormous monopolies once more raised the indignation of tribunitian patriotism, and gave birth to the famous *Licinian Law*, so denominated from its author, Licinius Stolo. By this it was ordained, that no citizen, of what station soever, should possess more than five hundred acres to his own share; nor maintain more than one hundred head of large, and five hundred of small, cattle; and that a certain number of free men should be constantly employed in the business of husbandry¹⁵.

This law was admirably suited to the modest ideas of a republic; and well calculated to preserve the just equipoise between the higher and lower orders of the community. While it supplied the nobles with sufficient affluence to command all that respect which was due to their station, it deprived them of the power of corrupting or depressing the poor: and while it supported that distinction of rank, which is essential to the dignity and good order of civil government, it prevented the common people from becoming a burden to the State, by enabling them to maintain their families with their daily

¹⁴ "Οι πλουσιοι, τινος της αμμου γης της πολλης καταλαβοντες, και χρημ διαβουτες ετις αφες οτι αφαιρεθωσιν, τα η πωλησιν οφισιν ισην τι η αλλα βραχια πωλησιν, τα μη ανυμνοι πωλδοι, τινος βια λαμβανοντες, οια μακρα αντι χωρησιν ογυρουν, οπτοις η αυτη γαιρως και ποιμοι χραισιν. — Της δ' Ιταλιας ολιγοτης και δυσανδρια καταλαβοντες, ογυρουντες οιας τι και ισοφους και ογυρουντες. η δε και σχολασιν απο τωσιν, οτι πωλησιν διαβουτες, της γης οτι τωσιν πλουσιωι εχουσιν, και γαιρως χραισιν διαβουτες αντι ελευθερων App. de Bell. Civ. 353.

¹⁵ "Creati tribuni C. Licinius et L. Sextius, promulgavere leges, omnes adversus opes patriciorum, et pro commodis plebis:—alteram de modo agrorum, ne quis plus quingenta jugera agri possideret." Liv. 6. 35. Επειτα (sc. δημαρχοι) μαδρα εχιν της γης ολιγοτα πωλησιν ολιγοτα, μηδι ογυρουντες ικατοι ολιγοτα τα μιζονα, και πωλησιν τα ελευθερα. και η ταυτα δ' αυτους αριθμοι ελευθερων εχιν ογυρουντες, δε τα γαιρως ογυρουντες και πωλησιν ταυτα. App. de Bell. Civ. p. 354.

labor.

labor. That no sanction might be wanting to insure the operation of a law of such extensive importance, it was guarded likewise by oaths, fines, and forfeiture ^{C H. A. P. I.} ¹⁶.

It might well have been expected that these heavy penalties, enforced by such solemn obligations, would have checked the growth of this crying evil, for ages to come. But the best-concerted designs of human wisdom soon become impotent and inefficacious, when opposed by the cravings of avarice, the insolence of power, and the audacity of ambition. No sooner was the law passed, than it was broken by the author himself; who is the first upon record that became the object of its severity ¹⁷.

This well-timed example, most probably, put a stop to any gross and open violation of it for the present; though it was far from being a sufficient barrier against the future course of the evil itself. The more cautious and circumspect evaded the prohibitions, by making purchases under borrowed names; while others, more daring, set them at open defiance ¹⁸. A law, designed to humble the pride of riches, and give countenance to parsimony, was ill-adapted to the aspiring views of the conquerors of Carthage and Numantia. The ancient abuses gathered strength from the successes of the state; and were daily renewed, with many aggravations,

¹⁶ Οἱ μὲν δὲ ταῦτα νόμῳ ἀντιλαβόντες, ἐκέρχοντο ἐπὶ τῷ νόμῳ, καὶ ζήμια ἔρριπον, ἡγοῦμενοι τὴν λόγον γὰρ ἀντίκα γὰρ αἰνῶσι κατ' ἐλάχιστον διασπαρασσέσθαι. App. de Bell. Civ. p. 354.

¹⁷ “Eodem anno (396) C. Licinius Stolo, a M. Popilio Lænote sua lege “decem millibus æris est damnatus, quod “mille jugerum agri cum filio possideret, “emancipandoque filium, fraudem legi tulisset.” Liv. 7. 16.

“Ipse cum jugera quingenta haberet, “et altera emancipati filii nomine possideret; in judicium vocatus, et primus omnium sua lege punitus est.” Sext. Aul. Viét. de vir. illust. c. 20.

¹⁸ Φρογίς δ' οὐδέμῃ καὶ οὐδὲ τῶν νόμων οὐτὲ τῶν ὁρίων ἀλλ' ὅστις καὶ ἰδοὺν φρογίσαι, τὴν γῆν εἰς τοὺς οἰκίους ἐπὶ ὑποκρίσει διτιμοί, οἱ δὲ πολλὰς τιμὰς καταφρονοῦν. App. de Bell. Civ. p. 354.

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III.

threatening the utter ruin of the industrious husbandman, and the extinction of popular liberty¹⁹.

Tiberius
Gracchus.

While avarice and rapine were thus ranging at free quarter over the patrimony of the poor, one strenuous effort was made to repel their hostile invasions, by the virtue and courage of the famous Tiberius Sempronius Gracchus; a youthful hero, adorned with every valuable accomplishment of the genuine Roman. Melting with pity at the desolate view of the Hetrurian plains, forsaken by their native inhabitants, and over-run by foreign slaves; animated likewise by the cries of the whole people, who importunately demanded the restitution of the alienated lands, he resolutely stood forth the advocate of their deserted cause²⁰.

A. U. C.
620.

Armed with the power of the tribunate, he meditated an excellent scheme of redress; and engaged several other eminent persons, who had yet escaped the general contagion, to support it with their united authority²¹. The candid and equitable principle upon

¹⁹ The same abuses which Appian has assigned as the causes of the *Licinian Law*, Plutarch has applied to these later times; both, probably, upon equally solid reasons: Βραχυ μιν χρόνον επισχί την πλεονεξίαν το γραμμα τωτο, και τοις πτωχοις εδωθησι, κατα χωραι μωσσην επι των μιμισθωμενων, και ημομενοις ην εκαστος εξ αρχης ειχε μοιραν. υστεροι δε των γυντησιων πτωσιων υποβλητοις πτωσιωντοι μεταφιορησι τας μισθωσις εις ιαυτης, τελος δε φανρω; ηδη δι' ιαυτων τα πλεονεξια κατιχοτων, εξωσθησις οι πτωχες, ουτε ταις στρατιας επι προθυμης παριχοι ιαυτως, ημωτων τι παιδων ανατροφης, ως ταχυ την Ιταλιαν απασαν ολιγατ- δμως ελευθιρων ισωδαι, δισμωτηριων και βαρβαρι- κων εμπιπλησθαι, δι' ων γεωργων οι πλουσιοι τα χωραι, τας πολιτας εξιλασθησις. Plut. in Tib. Grac. p. 365.

²⁰ These circumstances are related by

Plutarch, upon the authority of the brother of Tiberius, and may therefore be relied upon, for truth. 'Ο δε αδελφος αυτου Γαιος η την βιβλιον γεγραπτο, εις Νομαλιν πορευομενοι δια της Τυρρηνιας του Τιβεριοι, και την ηρημιαν της χω- ρας ορωτα, και τας γεωργησας η σιμολιας, οικιας επισταλεις και βαρβαρους, τοτε πωροτοι επι τον βαλυσ- δαι την μυριων κακοι αρξασαν αυτοις πωλιτιας. την δε πλεονεξιαν αυτος ο δημος ορμησεν και φιλοτιμιας εξηλη, προκαλεμενος δια γραμματων αυτου ην εσας και ταχους και μνημασι γραφομενων, αναλαβειν τοις πτωχοις την δημοσιαν χωραν. Plut. in Tib. Grac. p. 366.

²¹ 'Ο Τιβεριος δε δημαρχος αποδιχθεις, ενδυσ- εν' αυτην ορμησει την στρατην. Id. ib. And a little further: Ου μη εφ' αυτω γι συνθηκει τοι- νομοι, τοις δε πωρτωσιων αρετη και δοξη των πωλι- των συμβουλοις χρησαμενος. Id. ib.

which

which this law was framed, is a convincing proof both of his wisdom and moderation; for it may be truly affirmed, that a gentler remedy was never before applied to so desperate a mischief²². Free from the impolitic and malevolent desire of reducing all orders to one common level, his only object was to preserve the proper distinction between each; by bringing back the rich within the pale of those laws which they had so shamefully transgressed; and by restoring the poor to those rights of which they had been so unjustly deprived. To quiet the apprehensions of the offenders, he remitted the fines inflicted by the Licinian law; and to alleviate their hardships, directed that the value of the lands to be resigned should be repaid out of the public treasury²³. As a further indulgence, he allowed the heir of the family to retain two hundred and fifty acres, over and above the estate possessed by his father²⁴.

The humble commonalty, amply satisfied with the proposed re-formations, would willingly have buried all former acts of injustice in total oblivion, on condition only of having their possessions secured from any future incroachments. But the opulent landholders, enraged at the law by the instigations of avarice, and at the author by resentment and perverseness, strove to alarm the jealousy of the people against Tiberius, by charging him with a design to introduce innovations, and excite commotions in the state. The powers of eloquence, however, exerted in so just a cause, rendered him invincible²⁵; and his adversaries, confounded by the force of it, had

²² Και δοκεν νομος εις αδικιαν και πλεονεξιαν τοσαυτην μηδιστοι πρωτοιρος γραφεται και μαλακαυτιρος. Plut. in Tib. Grac. p. 367.

²³ Ουκ γαρ ιδι δικην της απιδιας δειναι, και μετα ζημιας ην παρα της νομης ικαρηνηο χωραν αφιναι, τυτης εκλιουσι τιμην προσλαμβανοηας εκβαινεν ον αδικως εκκληητο, και παραδειχθηδαι της βοηθιας δομης των πολιτων. Id. ib.

²⁴ Απκαυηζε τοι νομον, μηδεια των πιντακοσιων πλεδρων πλεον ιχην. παισι δ αυτωι, υπηρ τοι παλαιον νομον προστιδου τα ημισια τετα. Appian de Bell. Civ. p. 354. This clause is not mentioned by Plutarch.

²⁵ Αλλα καιπινε δτω της επαιροδωσιας υσης ευηνημοτος, ο μιν δημος ηγαπα, παρεις τα γρηγη: μια, παυσασδαι το λοιπον αδικυμενος· οι δε πλεουσι κατ.

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III.

had recourse to the common expedient of dividing the tribunitian authority against itself; by prevailing upon Octavius, another of the same body, to interpose his negative.

But this injudicious resistance served only to aggravate the evil, which it meant to remove. It inflamed the zeal of the intrepid Tiberius; provoked him to abandon the mild and humane design of his first law, and to bring in another, much more severe upon the engrossers of lands; enjoining them to give up immediately whatever they possessed, contrary to the permission of the laws then in being²⁴. The dissensions still increasing, he went further; suspended the magistrates from the exercise of their respective jurisdictions, sealed up the treasury, and put an entire stop to the ordinary course of public business.

After various fruitless attempts to reconcile the contending parties, Tiberius, by his superior influence over the people, deposed Octavius from his office of tribune; and having thus violently overpowered all opposition, his law was confirmed by the voice of the "comitia," and himself appointed one of the commissioners to regulate the intended distribution. At the same time, to secure the affection of his fellow-citizens, he took advantage of a singular bequest, lately made by Attalus king of Pergamus, of his whole dominions and fortune to the Roman people; and proposed, that the ready money, left by this infatuated prince, should be divided among such of the poor as had obtained a share of the public lands, to enable them to improve their farms; and as to the cities and

και κληματα πωλησεν μεν ται νομοι, ορη δὲ και δινας ην και αμαχος. Plut. in Tib. Grac. p. 367.
φιλοτιμια του νομοδωτη δι' εχθρας εχουσαι επιχειρησιν αποτρεπειν του δημοι, ως γαρ αναδασμοι επισυγχυσαν της πολιτικης εισαγωγης του Τιβερίου, και παντα πραγματα κινησιν. αλλ' ηδη ισχυροισι ο γαρ Τιβεριος προς πολλη υποδοσιν και δικαιαν αναγκησιν λαογυ και φανωσιμα προσημασιν, δυναμεν πραγματα, 25. Προς ταυτα παροξυνδης ο Τιβεριος, του μεν φιλανθρωπου καταλυτο νομοι του δι ηδω τι τοις πολλοις και σφοδροτατοι επι της αδικησιας εισεφικον, ηδη κλυουσιν εξισασθαι της χωρας ην οικησιντο παρα της κρατικης νομης. Plut. in Tib. Grac. p. 368.

territories,

territories, he denied the disposal of them to the senate, insisting that the right belonged to the people in general, whose pleasure he should consult upon that occasion. C H A P.
I.

To protect him against the malice of the exasperated nobles, he was elected tribune for another year; and, strengthened by this renewal of his authority, gave daily proofs of the sincerest attachment to the popular cause. But his enemies, watching his most innocent motions with an eye of prejudice, carried the folly of suspicion to so great a length, as to interpret a sudden elevation of his hand toward his head (designed by himself only as a signal of distress in the heat of a tumult), into the demand of a diadem²⁷. What was suggestion only in the "forum," was truth in the senate. The members of that haughty body, trembling for their usurped property, were clamorous with the consul to avenge them of the tyrant. But that wise and just magistrate refusing to pass sentence, before the guilt was proved, Scipio Nasica, whom fear and self-interest alone had suddenly transformed into a champion of liberty, rushed out, at the head of a band of desperate partizans, upon the defenceless tribune; and put him to a barbarous and ignominious death with a vile weapon²⁸, the use of which could only have been excused against a savage and noxious animal: and thus fell Tiberius

²⁷ Τῶν δὲ ἀπαιτῶν θαυμάζοντων τὰ γήματα, καὶ συνδαιόμενον, ὁ Τίβεριος ἤλατο τῇ χερὶ τῆς κεφαλῆς, ἰνδυνεύων τῇ ὀψὶ τοὺς κινδύνοι, ἐπὶ τῆς φωνῆς καὶ σπινθῶν. οἱ δὲ ἐπαύθοντο τὸ τοιοῦτον ἰδόντες, ἰδίῳ πρὸς τὴν βουλὴν ἀπαγγέλλοις αὐτοὺς διαδήματα τοῦ Τίβερיו· καὶ τὸ τοιοῦτον ἰσχυρὸν τῆς κεφαλῆς ἐπιθίγγανον. Plut. in Tib. Grac. p. 377.

²⁸ Thus stands the remainder of this account in the original, which, as an instance of the violence and partiality of the senators, well deserves the notice of the reader: Πᾶσις μὲν οὐκ ἰδομένης τῆς οὐχὶ Νασικῆς

ἤνυσεν τὸν ὑπὸ τῆς πόλεως βοήθειαν, καὶ καταλύειν τοὺς τυράννοι. ἀποκρινάμενος δὲ σφραγὶς ἰκεῖνου, βίβας μὲν ὑδρὸς ὑπάρχειν, ὑδὲ ἀναμείψαντες ὑδρὸς αὐτῶν ἀκριβῶς, εἰ μὴν τι ψεύσεται τὸ τῶν παρανομῶν ὁ δῆμος ὑπὸ τοῦ Τίβερיו πεισθῆναι ἢ βίβας, τὸ τοιοῦτον μὴ φιλαξίαν· ἀπακηδύνας ὁ Νασικῆς, ἐπὶ τοῦτον, εἴη, προδίδωσιν ὁ ἀρχὴν τῆς πόλεως, οἱ βυλομένοι τοὺς νόμους βοήθειαν ἀκολουθεῖν. — ἀνταμείβει δὲ αὐτὸν (sc. Τίβερיו) ὁ μὲν ἐμφανῶς καὶ σφραγὶς εἰς τὴν κεφαλὴν πατάξας ποδὶ δέξιν, Πωπλίος ἢ Σατερνίος, εἰς τὴν σπινθῶν. Id. p. 378.

Gracchus, an illustrious victim to a rapacious and implacable senate.

It is for posterity alone to do that justice to the memory of this accomplished patriot, which the envy and selfishness of his contemporaries most ungratefully withheld. The senatorial faction, whose schemes of monopoly and oppression were, for a while, rendered abortive by his zeal and activity, spared no pains to blast his reputation, and to stigmatize him for ever as a seditious disturber of the repose of his country. In this light he is represented in many passages of the writings of Cicero, the staunch and determined panegyrist of the aristocratical party; while Nafica shines forth in the same, in all the splendid colors of heroism; though, in fact, the principal abettor of a cruel assassination, in order to secure himself against the penalties of those laws which he had so grossly violated. But an impartial reader will be always upon his guard against the ingenious sophistry, and deceitful eloquence, of this captivating orator; who by the word, republic, only meant the senate and its friends; and by liberty, the right of the aristocracy to tyrannize at pleasure over the common people.

In the earlier stages, indeed, of this dispute, it should be remembered, to the honor of both parties, that each behaved to the other with that respect and forbearance, which are the natural effects of a purity of manners, and an uncorrupt education²⁹. But that a contest, so very interesting in its consequences, should, in time, beget animosity and violence, can never be any matter of wonder, while the calm empire of reason carries so weak an influence over the

²⁹ Ησαν εν ἡμῶν τι κατ' ἰκατὴν ἡμέραν ἀγωνίαι· διὰ τὸ ὅτι γὰρ μόνον ἐν βουκχευμασίῳ, ὡς οἶμαι, ἀλλὰ καὶ ἐν φιλοτιμίαις καὶ ὀργαῖς τὸ σφικτικὸν καλῶς, καὶ περὶ ἐξ ἀκρας σπουδῆς καὶ φιλοπονεῖας ἀναιρεῖσθαι, καὶ περὶ αἰδουσθαι σωφρονίως, ἐφίγησι καὶ κατακοσμοῦναι τὴν διανοίαν. Plut. in Tib. Grac. p. 368.

imperious

imperious fallies of the human passions. It must be confessed, therefore, that the discretion of Tiberius gave way, in the end, to his resentment against the senate; and, in some of the later exertions of his legislative powers, transported him so far beyond the limits of moderation³⁰, as to create suspicion and disgust in the minds even of his most steady adherents. The deposition of Octavius was a high indignity upon the whole tribunitian college; and a bold attack upon that freedom of opinion, which is the unalienable right of every member of a free government, and the characteristical distinction of this popular office in particular, wherein each constituent was equal in power to all the rest of his colleagues³¹.

Tiberius himself was fully sensible of the force of this truth; for, without it, even his own conduct would have been little less than conspiracy and treason against the state. Admitting, therefore, the principle, he found it expedient to apologize for this apparent excess of his duty³². "The tribunitian office," he acknowledged, "to be consecrated to the service of the people by its original institution;" from whence he deduced this conclusion, "that, if the tribune should become a renegade from the popular interest, or should exert that power to the injury of those for whose benefit it was granted, he in fact deprived himself; else he might lay the Capitol in ruins, or set fire to the fleet, without

³⁰ —πᾶσα τροπὴ ἤδη τῆς βουλῆς τῇ ἰσχύϊ κο-
λῶν, πρὸς ὀργὴν καὶ φιλονικίαν μάλλον, ἢ τοὶ τῷ
δικαίῳ καὶ συμφερόσι λόγιμον. Plut. in Tib.
Grac. p. 375.

³¹ "Ubi intercedentem legibus suis
Cnæum Octavium videt Gracchus, *contra*
fas collegii, jus potestatis, injecta manu,
depulit rostris: adeoque præsentī metu

"mortis exterruit, ut abdicare se magistratu.
"cogeretur." Flor. 3. 14.

³² Αἰσθανόμενος δὲ τῇ πολιτικῶν τοῦ
Οκταβίου ἢ τοῖς δυνατοῖς μόνον ἀλλὰ καὶ τοῖς πολ-
λοῖς ἐκπαθεῖν (μὲν γὰρ τι καὶ καλὸν εἶδοι το
τῷ δημαρχῶν ἀξίωμα μέχρι τῆς ἡμέρας ἐκείνης
διατηρημένοι ἀνηρηθῆναι καὶ καθυβρισθῆναι) λόγον ἔ-
τη δὴμῳ διεῖναι. Plut. in Tib. Grac. p. 374.

BOOK
III.

"control or punishment". This doctrine he endeavoured still further to illustrate, by a reference to those implied conditions, upon which the antient regal dignity itself was held; for "though conferred upon the reigning prince, with the most solemn ceremonies which the superstition of the age could invent, yet was it for ever abolished, for the misconduct of a single tyrant".

This, it must be owned, was a very plausible mode of reasoning; and, if applied with judgment and precision, strictly consonant with the natural rights of mankind, and the most refined notions of political liberty. But whether the parallel was just, may be a question of some difficulty. Certain it is, that the people, in the present case, considered it as a fallacy. The gaudy pageant of state, called a King, was, in their eyes, an object only of terror and detestation; according to the prevailing prejudices of those times, he passed almost for a monster and a cannibal³³; while the partial and uncontrollable power of the tribunes, was, to them, the only bulwark of public liberty. The step now taken by Tiberius was perfectly new; and being contrary to every idea hitherto entertained of the privileges of this important office, was naturally productive of clamor and dissatisfaction.

³³ Εφη γὰρ ἴσον τοῖς δημαρχοῖν εἶναι καὶ αὐτοῖς, ὅτι τῇ δυνάμει καθίστανται, καὶ τῇ δυνάμει ποιεῖται. αἱ ἐν μεταβάλλοις τοῖς δημοῖς ἀδικεῖ, καὶ τῇ ἰσχύϊ πωλεῖται καὶ παραινεῖται τῇ ψήφῳ, αὐτοὶ ἑαυτοῖς ἀποστρέφονται τῆς τιμῆς, ἐφ' ὅς ἑλεον ἢ ποιοῦν. ἐπεὶ καὶ τὸ Καπιτωλίον κατασκαπείσθαι, καὶ τὸ ἱερὸν ἐμπιπρῶναι δημαρχοῖν εἶναι διήκου. καὶ ταῦτα μὲν ποιοῦν, δημαρχὸς ἐστὶ πτωχὸς· εἰ δὲ καταλύῃ τὸν δημοῖ, ὁ δημαρχὸς ἐστὶ. Plut. in Tib. Grac. P. 374.

³⁴ Καὶ μὴ ἡ γὰρ βασιλεία, πρὸς τῇ αἰσάναι ἀρχὴν ἔχειν ἢ ἑαυτὴν συλλαβεῖν, καὶ ταῖς μεγάλαις ἐργασίαις καθίσταται πρὸς τὸ θυμὸν· ἀλλὰ Ταρκύνιον ἐξέβαλεν ἡ πόλις ἀδικούντα, καὶ δι' ἑνὸς ἀνδρὸς ὕβρις ἢ πατριὸς ἀρχὴ καὶ κίεσσα τῇ Ῥώμῃ καταλύθη. Id. ib.

³⁵ When Eumenes, king of Pergamus, who had paid a visit to Rome, where he was much caressed by the senate, had been recommended to Cato the Censor, as a prince of an amiable disposition, and a firm friend to the Roman people; Εὐμὲν, ἡγεμὼν (sc. Κατωῖ) ἀλλὰ φύσει τὸτο τὸ ζῶν, ὁ βασιλεὺς, σαρκοφάγον ἐστὶν. Plut. in Cat. Maj. p. 337.

But,

But, upon the whole, whatever may be the sense of its real propriety, it will always remain an incontestible proof of the precarious tenure of Roman liberty, even under that very office, which was expressly created for its protection: and is a striking instance, among others, of those political solecisms, so congenial with republican governments. Though the power annexed to it was arbitrary, it was, at the same time, divisible; consequently, void of one essential quality, that gives a degree of consistency even to despotism. Each member of this heterogeneous body was co-ordinate with, and independent of, all the rest of his associates, and carried the whole of the official authority in his own person. Unity of sentiment, and harmony of operation, were therefore liable to daily interruption by internal opposition; which, in its lightest consequences, suspended all action, and much oftener threw the whole state into confusion. As the days of outrage advanced, this was really the case; the tribunitian house, daily divided against itself, became a nuisance, not only to the patricians, but to its own constituents; till, in the end, it was almost annihilated by a bold stroke of dictatorial omnipotence; and revived, in after times, for the sole purposes of sedition and usurpation.

The soul of the murdered Tiberius still survived in Caius Gracchus; who being invested with the office of tribune, enraged at his brother's murder, and inspired by his laudable example¹⁶, enacted several laws, with a view of promoting the popular interest, and of depressing the influence of the senate. Among these the Agrarian laws were not forgotten¹⁷; to which were added others, for the regulation of the army—of the market—to grant the Italians an equal right of suffrage with the citizens of Rome; and a very im-

¹⁶ "Statim et mortis, et legum fratris sui" Caius Gracchus." Flor. 3. 15.
¹⁷ "vindex, non minore impetu incaluit" App. de Bell. Civ. p. 360.

BOOK
III.

portant one, to transfer the judicial power from the senate to the equestrian order³⁸. In all his orations in behalf of these laws, he constantly turned himself to the assembly instead of the senate; and seemed to pay such a superior deference to their authority, as if he expressly intended to exalt the power of the people above that of the fathers³⁹.

Thus supported by the affection of the public, Caius acquired a kind of monarchical sway over the whole state. Even the senate condescended to consult him in cases of difficulty; a compliment which he very punctually returned, by promoting, to the utmost, the honor of that venerable body⁴⁰: and to shew himself worthy of this general confidence, he devoted his whole thoughts to the service of the public; so that they who both feared and hated his power, were stricken with wonder at his application and perseverance⁴¹.

The senators, alarmed at his increasing popularity, which they found impossible to ruin by direct opposition, artfully changed their

³⁸ Τῶν δὲ νόμων ὡς προσέειπε τῇ δυνάμει χαρίζομενος, καὶ καταλύων τὴν συγκλήτου, ὃ μὲν ἦν κληρωτικός, ἅμα ἦμην τοῖς πτωχοῖς τῶν δημοσίων ὃ δὲ, γρατιωτικός, ἰσθῆτα τι καλεῖται δημοσία χορηγισθῆναι, καὶ μὲν οὖν ὡς τὸ τοῦ μισθοφορᾶς ὑφαιρῖσθαι τὴν γρατιωτικὴν, καὶ πᾶσι τοῖς ἴσῃσι καὶ δικαίᾳ μὴ καταλίσθαι γρατιωτῆν ὃ δὲ, συμμαχικός, ἰσθῆναι πᾶσι τοῖς πολέταις τῆς Ἰταλίας ὃ δὲ, οὐτικός, ἰσθῆναι πᾶσι τοῖς πτωχοῖς τῆς ἀγορᾶς ὃ δὲ, δικαστικός. Plut. in C. Grac. p. 386. The biographer has affirmed, that Caius divided this power between the senators and equestrians, in which he is confuted by a learned modern critic; who has clearly shewn, from various authorities, that he transferred it absolutely from one order to the other. Rualdi Animadv. 26. in loc. cit. The further discussion of this fact is reserved for the history of the Roman judicature.

³⁹ Τῶν τοῦ νόμου προσέειπε, τὰ τι ἀλλὰ λέγεται σπουδάζει διαφροῖναι, καὶ τὴν πρὸ αὐτοῦ πάντων δημαγωγὴν πρὸς τὴν συγκλήτου ἀφορμὴν καὶ τὸ καλεῖται κομῆσαι, πρῶτον τότε γραφίς ἐξῆς πρὸς τὴν ἀγορὰν δημαγορεῖται, καὶ τοῖς λοιποῖς ὅτι ποιεῖν ἐξ ἑκείνῃ, μικρὰ παρηκολούθει καὶ μεταδίδωμι σχήματος μὲν πρᾶγμα κινήσας, καὶ μετατρέχων τρόπον τινὰ τὴν πολιτικὴν ἐκ τῆς ἀριστοκρατίας εἰς τὴν δημοκρατίαν ὡς τὴν πολλὰν δόξιν, ὃ τῆς βουλῆς, τοῦ καλεῖται τῆς ἀγορᾶς. Plut. in C. Grac. p. 387.

⁴⁰ Μοναρχικὴν τὴν ἰσχὺν ἐγγίνοι αὐτῷ αὐτῷ ὡς καὶ τὴν συγκλήτου ἀνιχνεύει συμβουλευτικὸς αὐτοῦ. συμβουλευε δὲ αὐτῷ τὴν καὶ τὴν πρῶτον ἀποφασίαν. Plut. in C. Grac. p. 387.

⁴¹ Ὡς καὶ τὰς πάντων μισθίας αὐτοῦ καὶ δειδοκρίας ἐκπληρῶσαι τοῖς δια πάντων ἀνυσίμοι καὶ τελευτῶν. Ib. p. 388.

ground to the side of the people; vying with him who should most gratify their extravagant humour⁴². Caius, therefore, appearing no longer singular in his attachment to their cause, his interest daily declined; his laws were repealed; and, after various acts of violence on the part of the consuls and nobility, being basely deserted by his former adherents, was himself driven to the fatal extremity of soliciting death, from the friendly sword of a faithful slave.

C H A P.
I.

This only restraint upon senatorial tyranny being now removed, the consul, with unwonted arrogance, usurped the dictatorial prerogative, by commencing a merciless persecution against the partisans of the Gracchi; three thousand of whom were put to death by his command, without waiting the formality of a legal trial⁴³. Soon after this, as if to shew all possible disrespect to the memory of these illustrious brothers, the proprietors of lands were indulged with a power of alienation, which had been expressly prohibited by the elder Gracchus. In virtue of this law, the poor were soon dispossessed, either by money or violence; and, at last, one of the tribunes abrogated all the Agrarian laws; leaving the estates in the hands of the former owners, upon the payment only of a certain contribution, to be divided among the lower classes of the people. But even this was soon disallowed by another tribune; so that the inferior orders having little left that could be called their own, the number both of freemen and soldiers daily diminished; the public revenues decreased; the laws sunk into contempt; and the regular administration of justice was relaxed and interrupted⁴⁴. The national temper

A. U. C.
632.

⁴² Η δὲ βελία, δούσα μὴ παύλασιν ἀμαχοῖς ἐξουσίᾳ δικλῆντος ἐν ὑπατίᾳ χρησαμένου, καὶ κα-
γνήσαι, καὶ καὶ ἀσυνήθῃ σπύρῃ ἐπὶ τοῖς πολλοῖς
ἀποτροπῆς, ἀβήμαγωγῆς καὶ χαρίζομένη παρὰ
το βέλτιον. Plut. in C. Grac. p. 389.

⁴⁴ Ἀπαξ δὲ τοῖς σοφισμασὶ τοιοῦτο τὸ Γρακχίου
νομὸν παρὰλυθεὶς, ἀρίστου καὶ ὑφελιμωτατοῦ οὐκ ἔδω-
κεν.

⁴³ Οὗτος μάλιστα (sc. Consul Opimius) πρῶτος

B O O K
III.

temper now took an entirely new turn ; the free, but modest, spirit of the plebeians degenerated into turbulence and ferocity ; and the severe, but humane, virtue of the patricians, into pride and imperiousness.

Hitherto, all contests between the senate and people, though upon points of the utmost importance, and though supported with the greatest obstinacy and acrimony on both sides, had been appeased by mutual concessions, and with due respect to the privileges and rank of each other. The worst consequences of their former disputes seldom went beyond a secession of the plebeians, till the grievances were redressed, or the differences accommodated. Their chief object was to secure themselves from the oppression of those in power. The tribunes were the sole conductors of their movements, the protectors of their rights, and the avengers of their quarrels⁴³. Though the true spirit and efficacy of a free constitution were too often lost in clamor and partiality, the assemblies of the "Comitia," and the ceremonials of the "Forum," were still kept up with a reverent exactness. The most untractable frenzy of contention vented itself in noise and altercation ; and swords were only drawn against the common enemy of their country. But now, for the first time since the expulsion of the kings, were popular insurrections stained with the blood of Roman

ναλο παραχρηται γενομενη. και της φοβης ου πολυ υγιον
διελυσε δημαρχος ετις, και ο δημοσ αδρους απαντων
εξεπιπρωκει· οθεν ισπανζον επι μαλλον ομου πολων
τι και εργατων, και γης προσοδου και διανομων,
και νομων, πειλικαιδικα μαλιστα ιτισιν απο της
Γρακχου νομοθεσιας, επι δικαιοσ η αργισ γεγονητες.
App. de Bell. Civ. p. 366-7.

⁴³ Ρωμαιοις ο δημοσ και η βουλη πολλοακις εις
αλληλους παρι τε νομων θισιν, και χριων αποκωπης
η γης διαδατουματης, η η αρχαιοτατης ετασιασται·
ου μνη τι χριων εργων εμφυλοι ην, αλλα διαφοραι

μωσαι, και εριδες ανομοι, και ταδη μετα πολλης
αιδους ικοιτις αλληλοις διετιθιντο. Ο δε δημοσ παλι
και συνηχομενος, εις τοιαυτε ιμν εμπωων, ουκ εχρη-
σατο τοις οπλοις παρουςιν, αλλ' εις το ορος εκδραμων,
το απο τυδελ κληζομενον ιερον, ουδεν ουδε τοτε χριων
εργων, αλλ' αρχην ιαυτη προσεατην απεφην· και
εκαλεισε δημαρχιαν, εις κωλυσειν μαλιστα των υπατων
απο της βουλης αιρουμενων, μη ειλεας αυτοις επι τη
πολιτεια το κρηλοσ ιναι. App. de Bell. Civ.
p. 349.

citizens ;

citizens; the weapons of death glittered before the eyes of the ministers of justice; and the peaceful seat of legislation was transformed into a field of carnage. Such were the fatal novelties reserved for the present age of tumult and barbarity ⁴⁶.

CHAP.
I.

The democracy being now past its meridian, from henceforward the antient republican liberty, though often the cry of the day, became no more than a bye-word in the mouths of the crafty ring-leaders, and insidious orators of the times, to fascinate the senses of an ignorant populace, and to make them the instruments of their own subjection. Conspiracies, riots, and assassinations were authorized by the example and command of the supreme magistrates themselves; law and good government were treated with disrespect and negligence ⁴⁷; and thus were fulfilled, with the severest tokens of heavenly vengeance, the prophetic imprecations of the persecuted Caius; who, in the bitterness of his anguish, supplicated the deity to whose altar he had fled for refuge, that the Roman people might bewail their treachery and ingratitude in never-ceasing slavery ⁴⁸.

Decline of
the demo-
cracy.

⁴⁶ Ταυτην πρώτην ἰσορροπὴν ἡ Ρώμη γασιν, ἀφ' ἧ το βασιλευσθαι κατέλυσαν, αἵματι καὶ φόβῳ πολὺν διακρινθῆναι· τὰς δὲ ἀλλὰς, ὅτε μικραὶ, ὅτε πρὶν μικρῶν γυνόμεναι, ἀνθυπικολοίς ἀλλήλοις, φόβῳ μὴ ἢ δύνασθαι τὸν πολλόν, αἰδομένοι δὲ τὴν βουλὴν ὁ δῆμος, ἴκοντο. Plut. in Tib. Grac. p. 379. Κιζαττικὴν ἡδὲ τὰ χιρῶν, βία καὶ σιδηρῶν τὰς δίκας ἡδὲ πρὸς αὐτοὺς. Plut. in C. Grac. p. 397. And, in another author, Πῶς δὲ οὐδὲν πῶ παρατηρῶν ἐς ἐκκλησίας, ὅδε φοροὶ ἰμφοῦλοι· πρὶν γὰρ Τίμιοις Γρακχοῖς δημαρχῶν, καὶ νόμους ἰσφύοντο, πρὸς αὐτοὺς ἡ γασὶ ἀπώλυτο. App. p. 349. C. Gracchus runis et iis scis, quas ipse se projecisse in forum dixit, quibus digladiarentur inter se cives, nonne omnem reipublicæ statum permutavit? Cic. de LL. 3. 9. For a fuller account of this famous contest about the Agrarian laws, in which the future fate of Rome was so deeply interested, the reader

is referred to the lives of the two Gracchi, as written by Plutarch; to the first book of Appian's History of the Civil Wars; and to Mr. Hooke's Roman History, book 6. chap. 7—10.

⁴⁷ Οὐκ ἀποχοῖ ἰτι αἱ γασίς ἐπὶ τῷ τῷ μυσί, διαφουμένων ἱκατοὶ σαφὲς ἐπ' ἀλλήλοις, καὶ ἐγχειρίδια πολλὰς φερῶν, κτινόμεναις τὶ τὸς ἀρχῆς ἐκ διαγνηματος ἐν ἱερί, ἡ ἐκκλησιαίς, ἡ ἀγοραὶς, δημαρχῶν, ἡ γεραιγῶν, ἡ ὑπᾶν, ἡ τῶν ἐς ταῦτα παραγγιλλόντων, ἡ τῶν ἀλλὰς ἐπιφανῶν· ὅδε τὶ ἀκοσμος ἐπὶ αὐτῶν αὐτῶν ὀλίγον, καὶ νόμων καὶ δίκης ἀσχερὰ καταφρονησίς. App. de Bell. Civ. p. 349, &c.

⁴⁸ Εἶδα δὲ λέγεται καθ' ὅδους ἐς γασὶν, καὶ τὰς χιρῶν ἀπώλυτας πρὸς τὴν Θεοῦ, ἐκινεσθῆναι, τὸν Ῥωμαίων δῆμον αὐτῆς ἀχαρίστιας ἐκείνης καὶ πρὸς δόσιας μὴδιστοὶ σταυρασθῆναι δαλυστά. Plut. in C. Grac. p. 398.

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While

BOOK
III.Causes and
consequences
of the Social
War.

While Rome was proceeding in the full career of success against her foreign enemies, a new flame broke out under her own walls, and was not extinguished without a concession, which, while it aimed at the extension of the popular government, hastened its destruction. The petty nations of Italy, who, at divers periods, had received the yoke of Rome, gradually forgot their animosities, and from professed enemies and rivals, became her steady friends and allies; aided her with their arms, contributed to her good fortune, and partook of her glory. Though considered in the light of subjects, they enjoyed their own free systems of domestic policy; and were governed by their own municipal laws, with a participation of various privileges of Roman citizens, according to the respective terms of their original union. But at last assuming to themselves a consequence from their former services, in which they were too much encouraged by the seditious declaimers in Rome itself, they demanded to be put upon an equality, and to be admitted to a general right of suffrage, with the inhabitants of the city⁴⁹.

To effect this, an attempt had been made several years before by Caius Gracchus, but was soon rendered abortive by those commotions, which put an end both to his laws and life. It was now renewed by Livius Drusus, a successor in the same office, who espoused the cause of the allies with great assiduity.

The accounts left us by the antient historians, of this bustling tribune, are so confused and unsatisfactory, that it is difficult to form an accurate idea of his character, or to understand the real motives of his conduct. Though generally represented as a warm and partial friend to the senate⁵⁰, he was at frequent variance with its mem-

⁴⁹ Τουτου γαρ δι' μαλιστα επιθυμου, (sc. Ιταλιανται) ως εν τωδε αυτικα ηγουμενος αντι εστηκει. App. de Bell. Civ. p. 371.

⁵⁰ "Drusi tribunatus pro autoritate senatus susceptus." Cic. de Orat. i. 7. As if this had been his sole inducement to undertake the office.

bers,

bers, even while laboring to support their dignity"; and, at other times, as deeply embarked in direct opposition. But such inconsistencies are not uncommon with officious and inconsiderate politicians; who, by an injudicious affectation of keeping upon fair terms with, and of exercising a promiscuous influence over, opposite parties, forfeit the confidence of them all. Thus, to reconcile the differences between the senatorial and equestrian orders, he proposed a law, to appoint a certain number of judges out of each, which unfortunately disgusted both: the senators being offended at this mixture, from an apprehension of its becoming a perpetual source of disagreement; and the knights, from a suspicion that their associates in office would thereby engross the whole power to themselves". To satisfy the allies, he promised them the freedom of the city; and to ingratiate himself with the people, led out several colonies into Italy and Sicily, for which a law had long ago been enacted, but the operation thereof as yet suspended".

Though Drusus, in all his regulations, appears to have had the welfare of the Italians the most sincerely at heart, this act of justice to his countrymen gave them no small dissatisfaction. The division of the lands, so long neglected, they considered as postponed for ever: while the rich, either by force or cunning, having seized upon considerable tracts, and become troublesome to their neighbours, were trembling at the apprehension of being called to a severe

" Qui quum senatui priscum restituere cuperet decus, et judicia ab equitibus ad eum transferre ordinem,—in iis ipsis, quæ pro senatu moliebatur, senatum habuit adversarium." Vell. Pat. 2. 13.

" Τῇ τε βουλῇ καὶ τοῖς ἰσχυρί, ὃι μάλιστα δι τότε ἀλλήλοις διὰ τὰ δικαστήρια διαφοροῦντο, ἐπὶ κοινῇ νόμῳ συναγαγὼν ἐπειράτο· σαφὲς μὲν οὐ δύναμτος ἐς τὴν βουλήν ἐκταύγειν τὰ δικαστήρια,

τεχνάζων δ' ἐς ἑκατέρους ὤδει.—περιηλθὲν δὲ ἐς τὸ καθεῖναι αὐτῶν, &c. App. de Bell. Civ. p. 371-2.

" Ἀλλ' οἷός τις Δρουσὸς δῆμαρχον, ἀπὸ ἐπιφανέστατος καὶ γένους, διηδύσει τοῖς Ἰταλιώταις νόμον αὐδὲς ἐπιτάγειν καὶ περὶ πολιτικῆς ἐπίσεχοντο.—ὃ δὲ, τὸν δῆμον ἐς τὸτο προδιδρασκόντων ὑπηγάτο ἀποικίας πολλὰς ἐς τὴν Ἰταλίαν καὶ Σικελίαν, ἐλθόντων μὲν ἐκ πολλοῦ, γέγονεν αὖτε οὐκ ὀλίγον. Id. p. 371.

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account for their exactions⁵⁵. Thus, by tampering too much with all parties, he excited a general opposition against himself; and, before he could carry his laws into execution, was suddenly cut off by a secret assassination⁵⁶.

This restless spirit, which attached him occasionally to such a diversity of incompatible interests⁵⁷, has been ascribed, in part, to an excess of pride and ambition⁵⁸; and partly, to a profuse liberality, that often laid him under the necessity of condescending to artifices, very unbecoming his high rank and station, either to give new life to his declining power, or to repair his broken fortune⁵⁹. But whatever might have been its motive, it was the chief cause of a fatal breach between Rome and her most natural allies, directly tending to a subversion of the constitution.

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The Italians, disappointed of those hopes which his ardor in their service had excited, entered into a league with each other, in support of their own pretensions; and, after a resolute and bloody contest, forced the Romans, by degrees, to yield to their demands, and to confirm the charter of these visionary liberties.

⁵⁵ Μορος ὁ δῆμος ἔχει τὰς ἀποικίας. Ὅι Ἰταλιῶται δ', ὅπερ ἂν δὴ καὶ μάλιγα ὁ Δρῦσος ταῦτα ἐτιχάζει, καὶ ὁ δὲ περὶ τῆς ἰσμῆς τῆς ἀποικίας ἐδίδουσαν, ὡς τῆς δημοσίας Ῥωμαίων γῆς (ἢ ἀπηγορευμένην οὖσαν ἐπὶ οἱ μὲν, ἐκ βίας, οἱ δὲ λαμβανούσας ἐκ τῆς ἀποικίας) αὐτὰς σφῶν ἀφαιρῶντος, καὶ πολλὰ περὶ τῆς ἰδίας ποχλῶμενοι. App. de Bell. Civ. 372.

⁵⁶ "Unde in senatu accusatus, cum dum se reciperet, immisso inter turbam percussore, corruit." Sext. Aur. Viñ. de vir. illust. c. 66. And thus, more particularly; ὡς ὁ Δρῦσος αἰσθόμενος, τε, καὶ οὐ θαύμα ὄντων, ἀλλ' ὅσον πειραστῶν βραχυφῶς ἔχοντι χρηματίζοντες αὐτοὺς, καὶ περὶ ἰσχυροῦ τοῦ πλοῦτος

ἀποπνεύσαν, ἐξέβησαν αὐτῶν, πεπληχθῆναι καὶ λυγρῶς ἐπὶ, κατεκρίθη. ὡς δὲ ἐς τοῦ μηνὸς αὐτῶν σκοτοτομοῦ μαχαιρίων ἐμπέπηγμένοι. οὕτω μὲν δὴ καὶ Δρῦσος ἀνέστη δῆμαρχος. App. de Bell. Civ. p. 372.

⁵⁷ "Tribunus plebis Latinis civitatem, plebi agros, equitibus curiam, senatui judicia, permisit." Sext. Aur. Viñ. de vir. illust. c. 66.

⁵⁸ "Marcus Livius Drusus, genere et eloquentia magnus, sed ambitiosus et superbus." Id. ib.

⁵⁹ "Nimie liberalitatis fuit, — ideoque cum pecunia egeret, multa contra dignitatem fecit." Id. ib.

Though

Though in possession of the chief object of their wishes, and exulting in their present success⁶⁰, they had little reason, upon the whole, to be proud of the acquisition. Their old manners still reserved the power of prescribing the terms of the incorporation; and to prevent the native citizens from being overpowered by such a tide of foreigners, declined admitting the Italians into the antient thirty-five tribes, but formed them into a small number distinct from the rest⁶¹; not allowing them to give their suffrages, till after the old ones had been called out in their legal order. By this politic distribution they were deprived of the only valuable part of the privilege for which they had so long been contending; and seldom found an opportunity of exercising it to any other purpose, than that of increasing the confusion of the popular assemblies.

As the right of voting, likewise, could be exercised only within the walls of Rome, it hardly compensated the charge and trouble of a journey from the remoter parts of Italy; so that the neighbouring cities alone could enjoy the benefit, with any tolerable convenience. But the legislative body being already too much incumbered by its original weight, every addition to its bulk made it still less fit for action than before; and supplied more space for the seeds of dissension to grow up to their full maturity. Thus, “by the intrigues of the great and ambitious, the “Comitia” were converted into combinations of conspirators; the authority of the people, their laws, and even themselves, were declined into mere phantoms; and so prevailing was the anarchy, that it was impossible to

⁶⁰ Ιταλιωτων τους επι η τη συμμαχια παρα-
μονοτας πληθυσιατο (sc. η βουλη) ισαι πολιτας
δυ δη μαλιστα μοτου πασης επιθυμουσι. App. de
Bell. Civ. p. 379.

⁶¹ Ρωμαιοι μιν δη τουσδε τους ποπολιτας, ουκ
εις τας πιντε και τριακοσια φυλας, αι τοτε ησαν

αυτοις, καταλεξαν (ινα μη των αρχαιων πλεονος ολις
η ταις χειροτονησις επικρατοι). αλλα δεκαπενθις
απεικων ιτιρας, η αις ιχνηροτομων ισχυατοι, και
πωλλακις αυτων η ψηφος αχρησις ην, οτι εαν πιντε
και τριακοσια πρωτερων τι καλουμηνων και υσων υπε-
ρμισον. Id. ib.

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“discern whether the acts of the legislature were ever brought
“their full completion.”

The antient boroughs, unconnected with each other, and unconcerned for the honor and tranquillity of the parent-city, were indifferent to the ordinary calls of government, though at all times ready to obstruct the regular administration of it with cabal and uproar. Obedient to the voice of faction, they blindly followed the standard of the intriguing demagogues of the times, wretches of dissolute morals, decayed fortunes, and desperate views; who, unwilling to stretch forth even a finger to uphold a sinking state, were eagerly straining every nerve to involve it in ruin, and waiting with anxious expectation for the bursting of the storm, to enrich themselves by the plunder of the wreck.

The powers of the antient constitution, and the force of the established laws, being quite enfeebled by this continued succession of civil discord; the heads of the contending factions devoted each other to mutual destruction, without restraint or remorse; while Rome herself stood in the midst, like a trembling victim, destined to bleed whoever should be the conqueror⁶¹. The senate was set against the people, and the people against the senate; liberty was the general pretence on both sides, and by both equally abused.

⁶¹ For the substance of these observations we are indebted to a very able master of political knowledge, who, in his remarks on this event, adds, “Les ambitieux firent venir à Rome des villes et des nations entières, pour troubler les suffrages, et se les faire donner; les assemblées furent de véritables conjurations; on appella *Comices* une troupe de quelques séditieux: l'autorité du peuple, ses loix, lui-même, devinrent des choses chimeriques; et l'anarchie fut telle, qu'on ne put plus sçavoir si le

“peuple avoit fait une ordonnance, ou s'il ne l'avoit point faite.” Montesquieu sur la Grandeur et Decadence des Romains, c. 9. A work earnestly recommended to the reader's perusal.

⁶² Μετα δε τωτο κρατος μεγαλοι εις τασταρχας πολεμου νομην συνεπληροθη αλληλοις, και η πατρις αδλων εκειτο η μωρη. App. de Bell. Civ. p. 383. Ες 'Ρωμην τοτε, διαφθαρηται το δημο, και πωντος αυτοις το πολιτευμαλος, αλλος αλλαξοδιον ανηγατο δυνατης. Plut. in Par. Lyf. & Syll. p. 99.

Of

Of these pests of their country, the most celebrated, as well as the most mischievous, were Marius and Sylla. The first, a steady champion of the people, not from any principle of humanity or patriotism, but from a sympathy of manners, and a similarity of condition; not with a design of protecting them in the enjoyment of decent liberty, but of encouraging them in wild licentiousness: the other, a no less warm patron of the nobles, not indeed to restore their authority, but to make them more dependent upon himself: while the equal aim of both was, to avail themselves of the assistance of their respective partizans, in support of their own usurpation.

Marius, from a mean and obscure origin⁶⁴, rose, by his personal valour, to the highest honors of the state; but disgraced the consular chair with the same rude deportment which he had contracted in his native cottage. Plain and parsimonious by education and habit, he despised elegance and splendor, for want of taste to enjoy them⁶⁵; and hated the patricians, from a consciousness, perhaps, of being totally unqualified for their society. His whole behaviour to the senate was actuated by a fullen and determined aversion, which induced him, on every occasion, to connect himself with its most bitter and inveterate enemies. With this view he contracted an intimate friendship with the tribune Sulpitius, one so consummately vicious, that it is recorded of him, "a more abandoned monster could no where be found, except when he excelled himself in wickedness⁶⁶." This daring incendiary, being always provided

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Effects of the contests between Marius and Sylla.

⁶⁴ Γεννητός δὲ ὑποπνὸν παταπασσὶ ἀδελφῶν, αὐτὸς γὰρ δὲ καὶ αὐτῶν. Plut. in C. Mar. p. 485.

⁶⁵ Ὅψι ποτε πολὺν ἰδὲ, καὶ τῶν ὡς πολὺν διατριβῶν ἔγνωσας, τοὶ δὲ ἄλλοι χρόνοι ἐκ μὲν Κεῖρατατος τῆς Λεπιδίας διατρίβειν ἔχει, πρὸς μὲν ἀγρίους καὶ γλαφυροὺς βίους, ἀγροικότερας, σὺν φρονίᾳ δὲ, καὶ ταῖς

σώλαις Ῥωμαίων τροφαῖς εὐκυνίας. Plut. in C. Mar. p. 486.

⁶⁶ Μάριος δὲ παραλαμβάνει Σουλπίκιον, ἀνδρῶν πρὸς αὐτὸν δευτέρου ἐν ταῖς ἀρεταῖς παλαιῶν ὥστε μὴ ζητῆται πῶς ἐστὶν ἑτέρῳ μοχθηρότερος, ἀλλὰ πρὸς τι μοχθηρότατος ἑαυτοῦ. Plut. in Syll. p. 55.

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with a chosen regiment of desperate ruffians, whom he distinguished by the title of his anti-senatorial band, insulted the authority of that illustrious body with all kinds of indignity, till he terrified it into an entire subjection to his pleasure⁶⁷.

By the intrigues of this active associate, and by flattering the hopes of the allies, with the promise of admitting them to an equal right of suffrage with the antient tribes, Marius procured a law, which, in effect, gave him an absolute sway both over senate and people⁶⁸. To establish himself still further in the exercise of this usurped power, he put arms into the hands of slaves and vagabonds⁶⁹, in defiance of the fundamental laws of the commonwealth; and exposed the patrician order to the insolence and affronts of the vilest dregs of the community⁷⁰.

⁶⁷ Εστρεψεν δὲ καὶ τρισχιλίους μαχαιροφόρους, καὶ πολλὸς ἱππικὴν ναυσκην πρὸς ἅπαν ἰστομένῳ περὶ αὐτῶν εἶχεν, οὗς ἀντισυγκλήτῳ ὀνομαζέ. Id. ib. The following more general description is given of him by an historian who lived still nearer to his own time: "P. Sulpicius, tribunus plebis disertus, acer, opibus, gratia, amicitiiis, vigore ingenii atque animi celeberrimus; quam antea rectissima voluntate apud populum maximam quæsisset dignitatem, quasi pigeret eum virtutum suarum, et bene consultæ ei cederent, subito pravus et præceps, C. Marius, post septuagesimum annum omnia imperia et omnes provincias concupiscenti addixit, legemque ad populum tulit, quæ Syllæ imperium abrogaretur, C. Marius bellum decerneretur Mithridaticum; aliæque leges perniciosas et exitiabiles, neque tolerandas liberæ civitati tulit." Vell. Pat. 2. 18.

⁶⁸ Μάριος—ἐκιδύμενος τῆς στρατηγίας, ὑπεργαγέτο συμπρασσῶν ἐς τὸν Ποπίλιον Σουλπίκιον δημάρχον ὁποσχομένους πολλὰς, καὶ τοὺς ἐκ τῆς Ἰταλίας ἐκπολίτας, μειοικτουσίας ἐπὶ τῶν χρηστοποιῶν, ἐκπύλ-

πῶσιν ἐς τὰς φυλάς ἅπασας διαιρησῶν. οὐ περιόλγνυται τι περὶ τῆς ἑαυτοῦ χειρίας, ὥς δὲ ὑπηρίταις ἐς πάντα χρηστομένους ἑαυτοῖς, καὶ νόμοι αὐτῶν ὁ Σουλπίκιος ἰσχυρῶς περὶ ταῦτα ὅτι κυρωθέντος ἐμίλλει παρὶ ὁ, τι βυλοῖτο Μάριος ἢ Σουλπίκιος ἰσχυρῶς, τὸν ποπύλιον πολὺ πᾶρα τῶν ἀρχαίων πλεονῶν ὄντων. App. de Bell. Civ. p. 383. Ἡ συγκλήτος ἦν μὴ οὐχ αὐτῆς, ἀλλὰ τοῖς Μάρκῳ καὶ Σουλπίκιῳ διηκείτο προσταγμάσι. Plut. in Syll. p. 56.

⁶⁹ Ἀναγερθεὶς δὲ λαμπρῶς (ἰ. ὑπὸς), ἑαυτοῦ ἐστρατολόγει πᾶρα τοῖς νόμοις καὶ τῇ συνήθειᾳ, πολλὰς τοῖς ἀποροῖς καὶ δόλοις καταγραφῶν τὸν προσδεδιηγούμενον ἢ προσδεχομένον τῶν τοιούτων, ἀλλ' ὥσπερ ἄλλο τι τὸν καλῶν, τὰ ὑπὸ λαμπρῶς τοῖς ἀξίους ἡμιόταις, ἐκχυροῖ τὴν ὄψιν ἑκάστῳ τιθεῖναι δοκῶντος. ἢ μὴ ταῦτα γὰρ μάστιγα διεβάλλει τὸν Μάριον, ἀλλ' οἱ λόγοι θρασυῖς οἷος ὑπερφία καὶ ὑβρίως τῶν περὶ αὐτὸν ἐλπίων. Plut. in C. Mar. p. 492.

⁷⁰ Ταῦτα δὲ ἢ κενὸς ὡς ἀλαζονικῶς ἰσχυρῶς, ὡς μάλιστα ἀνιχνεύσασθαι τοῖς δυαλοῖς βυλομένοσι, ἀλλ' ὁ δῆμος αὐτοῦ, ἡδομένοσι τι τῇ βυλῇ προσηλακίζοντι, καὶ λογῶν κομπῇ, μετρίῳ αἰ φρόνηματι καὶ μετρίῳ ἐξικνύει, καὶ συνέχευμα μὴ φειδόμενος τῶν ἀξιολογῶν, χαρίζομενος τοῖς πολλοῖς. Id. ib.

Ambitious of a continuance in the consulship, which he had already enjoyed, contrary to law⁷¹, for four successive years, as a reward of his victories over the "Cimbri," he courted the favor of the people by a mean adulation, not only beneath the dignity of the office itself, but inconsistent with the roughness of his own character⁷². Cast in the ruder mould of nature; formed only for war and enterprize; and wholly incapable of shining in the arts of peace; he cunningly strove to make his services necessary, by involving the state in a perpetual tumult; affecting a contempt for law and civil policy; and satisfying himself with the possession of the consular *falces*, without wishing to acquire them by merit or virtue: and thus he deservedly incurred the detestation, not only of the whole body of the nobility, but of all persons of worth and honor⁷³.

Still indefatigable in mischief, he entered, towards the close of his life, into a league with Saturninus, another tribune of the same seditious temper; by whose assistance he enacted an Agrarian law, with the addition of a clause, obliging the senate to take an oath, to confirm whatever the people should decree, and to oppose them in nothing⁷⁴. Thus were they gratified with a deceitful liberty, not less fatal to their opponents than to themselves: a liberty bereft of sense, which hurried them through every excess of wild disorder,

⁷¹ Ros. Ant. Rom. 7. 9.

⁷² Περὶ τὴν μὲν ἐν ὑπαίσιαι διπλῇ τῇ δὲ ἐκτῇ, ὡς ὅδε ἰς πρῶτος ἀργυροῦ, διαρκείας τοῖς δημοῖς ἀνελκύσασθαι, καὶ πρὸς χάριν ἐκιδῶς τοῖς πολλοῖς, ἢ μοῖσι παρὰ τοῦ οὐκ οὐ καὶ τοῦ κοινῆ ἀξίωμα τῆς ἀρχῆς, ἀλλὰ καὶ παρὰ τὴν αὐτὴ φύσιν, ὅπως τις ἴσῃ βελόματος καὶ δημοτικῆς, ἢ καὶ τοῖς πρὸς αὐτοῦ. Plut. in C. Mar. p. 517.

⁷³ Εἶπεν ὅτι τὸ τοῦ δια τοῦ τῶν ὑπὸ τῶν ἰσχυρῶν καὶ κατακλύσασθαι. ἢ μὴ ἀλλὰ μάλλον οἰκὴν ἐκπληροῦσθαι καὶ δίδωσθαι τὴν ἐν ταῖς ἐκκλησίαις πρᾶξιν. ἢ μὴ γὰρ τοῖς ὑπὸ τοῖς ἀξίωμα καὶ δυναμὶν ἰσχύ, δια τὴν

χρῆσιν· ὃ δὲ τὴν πολιτικὴν περιουσίαν τοῖς πρᾶξιαι, κατακλύσασθαι ἐν τῇ τῶν πολλῶν ἰσχυρίαι καὶ χάριν, ὑπὲρ τὴν μεγίστην γινώσκει, τὸ βέλτερος ἢ καὶ πρᾶξιαι. πᾶσι μὲν ἐν πρᾶξιαι τοῖς ἀριστοκρατικαῖς. Id. ib. p. 518.

⁷⁴ Καὶ μάλιστα περὶ τῆς ταπεινότητος ἐφάρμοτο, πολλὰ συζητᾶσθαι τοῖς περὶ τοῦ Σατορνίνου· ἢ τὰ δημοκρατικῶν (ἢ Σατορνίνου), ὡς τῶν περὶ τῆς χάριος ἰσχυρίαι, ἢ πρὸς τὴν ἀρχὴν, τὴν συγκλητικὴν οἰκῶσαι πρὸς τὴν ἀρχὴν, ἢ μὴ ἰσχυρίαι ὡς αὐτὸς ὁ δῆμος ὑπὸ τῆς ἀρχῆς, καὶ πρὸς μὲν ὑπὸ τῆς ἀρχῆς. Id. ib. p. 519.

till it ended in a determined spirit of disobedience to all lawful authority; and almost dissolved the very bonds of their social union.

But the miseries of Rome were not alleviated by the death of Marius. His rival, in no respect behind him in ambition, healed one wound only by opening another; and in the room of a democratical anarchy substituted an almost absolute monarchy⁷⁵.

The hopes of the dejected patricians began to revive under the auspices of Sylla, who affected to patronize their drooping cause; though not so much with a view of restoring their diminished lustre, as of opposing them against the Marian faction; and, in due time, of making slaves of them all⁷⁶. Wholly intent upon advancing his own grandeur, he studied the most refined arts of oppression; made murder his amusement, and employed every terror that could enforce submission. To his eternal infamy, he stands foremost in the records of barbarity, as the inventor of those bloody proscriptions and massacres, that, in a short course of years, extinguished the most noble and respectable families in old Rome⁷⁷; and convinced even the most stupid and insensible among the people, that they had only exchanged one tyrant for another, without having obtained any mitigation of the tyranny itself⁷⁸. The titles of consul, proconsul, and dictator, which he assumed in turn, were only so many different names of the same thing⁷⁹; mere familiar distinc-

⁷⁵ Κορηλιος Συλλας, κακη το κακον ιωμενος μοναρχον αυτον απεφηνη επι ωλειστον. App. de Bell. Civ. p. 350.

⁷⁶ Ες τους υπολοιπους ο Συλλας ουδεν διωκει και καθ' ινα και κατα πολεις εξελπει θρονον· μηχρι και μοναρχου ιαυτον απεφηνη της Ρωμαϊου αρχης δλης, εφ' ουτοι εχρηζε τι και εβουλετο. App. de Bell. Civ. p. 400.

⁷⁷ Ουτος δεκαι πρωτος ους εκολασε θανατη περιγραφαι, και γιγα τους αναιζουσι, και μνηματα τοις

αλεγχουσι, και κολασις τοις περιπουσι περιγραφαι. App. de Bell. Civ. p. 409.

⁷⁸ Τυτο και τη βραδυτατη Ρωμαϊου ιουσαι παρησαν, ως αλλαγη το χρημα τυρανιδος, εκ απαλλαγη γιγνοι. Plut. in Syll. p. 88.

⁷⁹ Ο δε, απαξ αιρεδης γεγαυματος ηγμων, ετι συνηως δικα, ινι μιν υπαλοι, νη δε ανδραγατοι, νη δε δικαιοσυρα ποιων ιαυτον, ανι δε ον τυρανος, ον τοις επλοις ιμινι. Plut. in Paral. Lyf. & Syll. p. 100.

tions to soften the harsher sound of king²⁰, which he was, to every effectual purpose of real despotism.

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Sometimes, indeed, to save appearances, he suffered the consuls and other magistrates to be elected in the ordinary course. But to restrain them from exerting the constitutional powers of their offices, he himself cautiously presided over the whole, with all the pomp and retinue of the antient monarchs; enacting laws by his own supreme authority²¹, many of which are still extant, under the name of "Leges Corneliæ." The law to prohibit all persons, who had borne the office of tribune, from being elected into any of the higher magistracies, has been mentioned upon a former occasion²². This master-stroke of policy removed the only obstacle which stood in the way of his ambition: for being no longer an object of desire to the nobility, it returned of its own accord to its original principles; and, though not destroyed in fact, was reduced to such a state of debility, as to be in no condition to enter the lists against a perpetual dictator.

But of all the circumstances, in the eventful history of this fortunate usurper, none is so truly wonderful, as his voluntary abdication of that power, which he had obtained by such immense toils and dangers²³. That he, who had so insolently trampled upon the laws, should despise their vengeance, when within their reach; that he, who had spread ruin and desolation throughout the land,

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²⁰ Τῆς αὐτῆς τῆς ἀρχῆς, ἀρνούμενης βασιλείαν ἐπισκωπῶντες ἔκαθεν· ὅτι τὸ τῆ βασιλείας ὄνομα μόνον επικερυῖται· δι' δ' ἐπὶ τούτοις ἀπὸ τῶν ἔργων μεταφέρον, καὶ τυραννίδα ὁμολογεῖσθαι εἰλεγον. App. de Bell. Civ. p. 414.

καὶ τισσάρις (ὅσοι καὶ τῶν παλαιῶν βασιλέων ἦγοντο) καὶ φυλακῇ τῆ σωμαλὸς περιέδωτο πολλῶν νόμων τὴν ἐξέλιπον, καὶ ἰταρὺς ἐτιθέτο. App. de Bell. Civ. p. 412.

²¹ P. 96.

²² Ὁ δ' ἐς μὲν πρόσχημα τῆς πατρὸς πολιτείας, ὑπατοὺς αὐτοὺς ἐπιτρέψαν ἀποφῆναι—αὐτοὺς δ' ὁ δὴ βασιλεύοντι, δικτάτωρ ἐπὶ τοῖς ὑπατοῖς ἢ πῶς τις γὰρ ἐφεροῖτο πρὸ αὐτοῦ, οἷα δικτάτωρ, εἰκοσι

²³ Ἀλλογοὶ δ' ἤδη καὶ τὸ, βιασάμενοι ἐς τὴν ἀρχὴν ἐνδοκίμου, ἐπὶ τῇ ἐγκρατῇ ἔγνωτο, ἰκέτω ἀποδιδόναι. App. de Bell. Civ. p. 415.

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should be distinguished by a title denoting his peculiar *felicity*⁸⁴; and that the very people who had so loudly demanded at his hands the blood of their slaughtered parents, children, and friends, should attend his funeral obsequies with all those tokens of affection and applause, that were due only to the most virtuous protector of his country's liberties⁸⁵; are facts, which, though revolting against the natural sense of mankind, and inexplicable upon every principle of common reason, afford too pregnant proofs of that servile and wretched state of despondency, to which the real spirit of tyranny, when exerted with such unremitting perseverance, may reduce the freest and bravest part of the human species.

Good fortune alone, to which the uninterrupted success that attended every undertaking of Sylla has been too carelessly and superstitiously ascribed, was by no means a cause adequate to such great and uniform effects. A scheme of power, so fundamentally opposite to the true genius of the Roman constitution, could never have been imposed by the mere dint of brutal violence, had it not been likewise enforced by the malicious artifices of a most profound-cunning; which induced the author of it to be as profusely bountiful to the objects of his favor⁸⁶, as inexorably severe to those of his hatred. This was the professed maxim by which he invariably regulated his whole conduct⁸⁷; and by thus operating upon the

⁸⁴ Νόμος γὰρ ἡ χρηστότης ἡ εὐχρηστικός λόγος καὶ ἡ τιμωρία, ἀπὸ τοῦ θεοῦ δοθέντες, καὶ κρυπτομένης ἡ σιωπῆς. ἡ καὶ πάντα ὅσα διώκων ὁ Σύλλας ἐπαίειν τε καὶ ἀνυπατάειν, βίβαια καὶ ἀνυθύνειν ἐπιφύζοντο εἶναι. ἰκοῦν τε αὐτὴ ἐπιχρῶσαι ἐπὶ ἱππῶν πρὸς τῶν ἐμβόλων ἀνδρῶν καὶ ὑπεργραψαί, ΚΟΡΝΗΛΙΟΥ ΣΥΛΛΑ, ἩΓΕΜΟΝΟΣ ΕΥΤΥΧΟΥΣ. ὡς γὰρ αὐτοὶ οἱ κολακίαι διευτυχουμένη ἐπὶ τοῖς ἐχθροῖς νομίζον, καὶ προσηλθὶν ἐς βίβαιον ὄνομα ἡ κολακία. App. de Bell. Civ. p. 410.

⁸⁵ Ὡς δ' ἐπὶ τοῖς ἐχθροῖς, ἐπιφύζοντες μετὰ πομπῆς ἐπταύδα δὴ μαλίστα ὑπερογκοῦ. τούτοις τε γὰρ δόξαται πλείους ἀπὸ χρηστοῦ κατὰ σπουδὴν γυναικῶν

παριφοροῦ, δόξα τῶν πολεμῶν καὶ τῶν ἐπ' αὐτῇ γραμμάτων τιμωμένων τειλῶν, καὶ κατ' ἑκάστην φιλῶν ἄλλῃ τε τῶν ἐς τὰς ἐπιφύζοντες οὐ δύναται φράσαι σπουδῆς. App. de Bell. Civ. p. 417.

⁸⁶ Ἐπὶ τοῖς ἐκράτοις τῆς Ἰταλίας ὁ Σύλλας, καὶ διὰ τὴν ἀστυγομένην τῆς μὴ ἀλλῆς ἡγεμονίας καὶ στρατηγῶν ἡμίστο, πλεονεξίας ποιεῖν, καὶ ἀφαιρῶν ἐπὶ ἀρχῆς, καὶ χαρίζομενος ἀφθονῶς καὶ ἀνδραγαθῶς, ὡς ἱκανὸς εἶδεν. Plut. in Pomp. p. 426.

⁸⁷ Τοῦ ἐπιγράμματος φασὶν αὐτοὺς ὑπογράψαντας καταλιπεῖν, ὁ κεφαλαιὸς ἐστὶν, ὡς ἐπὶ τῶν φίλων τις αὐτοὶ οὐ ποιεῖν, ἐπὶ τῶν ἐχθρῶν κακῶς, ὑπερβαλεῖν. Plut. in Syll. p. 98.

passions.

passions of some by hope, and of others by fear, he effectually secured himself from the opposition of both.

C H A P.

I.

The senate in general, with numerous parties of the equestrian, plebeian, and military orders, were earnest in his cause, from motives of self-interest; while the rest, who dreaded the weight of his anger, and were yet sore with their former sufferings, neither dared to resist his measures, nor insult his memory; fairly acknowledging, that he had been most indulgent to their opponents, but was terrible to themselves, even in death²⁸.

Plutarch has left us an anecdote, which sets his cruelty in so strong a light, that we cannot omit this opportunity of presenting it to the reader's notice. From the great excess of it, his house was justly compared to a place of execution. When Cato the Younger, therefore, was introduced thither in the earlier part of his life, and saw the heads of many illustrious persons carried out from thence in heaps, while they who were present viewed the bloody spectacle in trembling silence; he cried out, in a transport of rage, "Why will no one put such a wretch to death?" "Because," says his master, "they fear, more than they hate, him." "Why then," replies the high-spirited youth, "do you not give me a sword, that by destroying him I may redeem my country from slavery?" But Cato was then too feeble to strike so glorious a blow, and the better

²⁸ Βοηθ' ἐπισημῶν ἢ τε βούλη πρῶτη καὶ ἡ ἰπ-
πικὴ ἐν μέρει, εἰδ' ὁ στρατός, εἰδ' ὁ δῆμος, οἱ μὲν, τῇ
ὅτι Σύλλαν ἐπιποδόντες, οἱ δὲ, διμαιοσίης αὐτῆς καὶ
κατὰ τοῦ στρατοῦ καὶ τοῦ πλοῦς οὐχ ἥτις ἡ πρῶτος.
εἰς τὴν γὰρ τῆς οἰκίας τῶν γιγνομένων ἀποβλεπομένης, καὶ
εἰς τὴν μνημὸν εἰς ἰδρᾶσιν ὁ αἰὲς, ἐξελκυσθεὶς, καὶ
ἀμολογού τοις ἰατρικαῖς ἐντυχιστάς αὐτοῦ ἐκινῶς
γυροῖται, καὶ οἶσι καὶ τιμῶντα φοβεύεται.
App. de Bell. Civ. p. 417.

²⁹ Ὁ Σαρπηδὼν (sc. Magister Catonis)—
πρὸς τοῖς Κατῶν σπινῶς ἐκ τῆς οἰκίας τοῦ Σύλλαν.

μὴδεν τότε προσεῖδεν αὐτῶν χρεὶ διαφρεσάν, ὑπο-
πληθὺς τῶν ἀγομένων καὶ γριβλαμένων. ἢ μὲν ἐν ἑσπέρῳ
ἐκίον τῇ Κατῶν τισσαρεκαίδεκατοι. ἰδὼν δὲ κεφα-
λὰς ἐπιφανῶν, ἀνδρῶν λεγομένων ἐκκομιζομένων, καὶ
κερυφα τῆς παροῦσας ἐκτενοῦσας, ἠρώτησε τοῦ παῖδα-
γωγῶν, ὅτι δὴ τῶν τοῦ ἀνδρῶν τοῦ ὕδατος ἀποκλινουσιν.
ἐκποῦς δ' ἐκίον, φοβούται γὰρ αὐτοῦ, ὡς πᾶσι, μάλ-
λον ἢ μισοῦσιν. τί οὖν, ἵππῃ, οὐκ ἔμοι ξίφος ἰδῶναι,
ἵνα αὐτοῖς ἀνὴρ ἀπὸ πολλῶν δούλων τὴν πατρίδα.
Plut. in Cat. Min. p. 218.

B O O K III. able durst not attempt it; so that this plague of his country not only died in peace, but was interred with honor.

The firm spirit of the ancient republic being now broken down by repeated oppressions, and the distractions of the state increased beyond the hopes of remedy, the people, despairing of the restoration of their antient liberty, went only in search after the most gentle bondage⁹⁰.

Appearance
of Pompey.

Of all the candidates for sovereign power, who had been educated in the tyrannical school of Sylla, none gave so promising expectations of improvement under his tuition, as Pompey, hereafter furnamed the Great. Though the hopes of the nobility rested much upon this young patrician; and though he generally pretended a partiality to their cause, as far as it stood in competition with that of the people; yet he certainly affected a superiority over his equals, from his very first entrance upon the stage of politics⁹¹.

The quick-sighted jealousy of Sylla easily discerned, that a young man of such high rank and connexions, with a genius so ripe and enterprising, must soon render himself either a serviceable friend, or a formidable rival. He therefore prudently cultivated his alliance by every possible mark of public esteem; among the rest, by rising to salute him at his approach; which, though a compliment of ceremony alone, must be taken, as really intended, for a most significant act of condescension in a proud dictator, who considered every other member of the state as the slave of his will⁹². To strengthen this attachment by a still more forcible instance

⁹⁰ Εἰς τὸ αὐτὸ προσηγορεύει αἱ συμφόραι τὴν πόλιν, αἷς δαλμαῖς ἐπιεικτέρας ζῆται, ἀπογίνωσι τῆς ἐλευθερίας. Plut. in Pomp. p. 423.

⁹¹ A remarkable instance of this is given by Plut. in Pomp. p. 423.

⁹² Χρησιμωτάτος ἐν τοῖς μαλιστα ὁδε ὁ αὐτοῦ (sc. Πομπηίου) ἐγγυθὶ τῷ Συλλᾷ. ὁδε αὐτοῦ ὁ Συλλᾷς ἐπὶ νηπάλων οὐκ ἦν ἐν τιμῇ, καὶ ἐπιστολῶν, φασιν, ὑπερηγάτο μόνον. App. de Bell. Civ. p. 399. — Ὑπερηγάμισεν τε προσιοῦσι τῷ Πομπηίῳ, καὶ

instance of confidence, he gave him his own daughter-in-law, though already great with child by another husband, having first prevailed upon Pompey to divorce his own wife:—a most tyrannical prostitution of the sacred rites of marriage, that soon produced many tragical events in both their families⁹³.

C H A P.

I.

But friendship with tyrants, like a house built upon the sand, can endure no longer than while supported by convenience or inclination. The promising talents of Pompey, his rapid victories, and the extraordinary honors, prematurely conferred upon him by a deluded people, filled the mind of Sylla with perpetual anxiety⁹⁴. Ashamed, however, to oppose him openly during his life, he contented himself with the pitiful and impotent revenge of omitting him in his will, wherein, according to the generous practice of that age, he had remembered his other friends⁹⁵.

The abdication of Sylla was rather a suspension of despotism, than a restoration of liberty. The ancient constitution was given up on all hands; and the government, with respect to the usurper himself, become a mere derelict; a jewel carelessly thrown way,

της κεφαλῆς ἀπαγοῖος το ἱματίου· αἱ πρὸς ἄλλους ἡ
ἐκείνης ἐνέμετο ποινῇ, καὶ πρὸς οὐκ ὀλίγους καὶ ἀγα-
θῶν περὶ αὐτοῦ. Plut. in Pomp. p. 425.—
Πομπήϊος—ἐξέλαμψεν καὶ διεφάνη μέγας, ὥστε Σύλλα, καὶ
αἱ πρὸς αὐτὸν καὶ ἰσχυροὶ καὶ πᾶσι πολλὰς παρ-
χῆς, ἐπέβλεψαν ἀποδοῦναι αὐτῷ, καὶ κεφαλὴν
ἀποκαλύψαν, καὶ προσέειπεν ἀντιπαύμενος. Plut.
in Crass. p. 255.

⁹³ Πομπήϊος δὲ θάνατον δι' ἀρίστην, καὶ μέγα
νομίζων οὐδὲν ἦν αὐτῷ πρὸς ἀγαθόν, ἵσχυρῶς
ἀποδοῦναι αὐτῷ πρὸς αὐτὸν. συμβουλευόμενος δὲ
τῆς γυναίκας αὐτοῦ τῆς Μιττέλλης, πειθόμενος τοῖς Πομ-
πήϊος ἀπαλλαγῆναι τῆς Ἀντιστίας, λαβὼν γυναῖκα τὴν
Σύλλα προσηγορεύσαντα Αἰμιλίαν, ἐκ Μιττέλλης καὶ Σκαυρῆ
γεννημένην, αὐτὴν δὲ συνεκκεῖναι ἤδη, καὶ κτεῖναι
τοῦτο. ἢ ὡς τυραννικὰ τὸ γάμον, καὶ τοὺς Σύλλα κα-
ρὸς μάστιγι τῇ Πομπήϊος βίῃ ἀποκτείναν, τῆς μὲν
Αἰμιλίας ἀγαθὴν ἡγεμονίαν παρ' ἑτέροις πρὸς αὐτοῦ.

ἐξέλαμψε δὲ τῆς Ἀντιστίας ἀτιμῶς καὶ οὐδὲν, ἀτι-
μῶς καὶ τὸ πάρος ἱσχυρῶς ἐκτείναντες διὰ τοῦ ἀνδρῶς.
καὶ πρὸς αὐτὸν γὰρ ὁ Ἀντιστίας ἐν τῇ βουλευτικῇ, δοκῶν
τῇ Σύλλᾳ τρεῖς διὰ Πομπήϊον. ἢ δὲ μὴ τῆς αὐτῆς
ἐκτείναντα ταῦτα, ἀποκτείναντες τοὺς βίοντες ἐκτείναντες. ὥστε καὶ
τοῦτο τὸ πάρος τῇ περὶ τοῦ γάμου ἐκτείναντες τραγικῶς
προσηγορεύσαντες, καὶ τῇ Διᾷ τοῦ τῆς Αἰμιλίας ἐκτείναντες
ἀποδοῦναι πᾶσι τῇ Πομπήϊος ἐκτείναντες. Plut. in
Pomp. p. 426, 427.

⁹⁴ Σύλλᾳ δὲ πρὸς αὐτὸν μὲν ἦν ἐκτείναντες ἀποδοῦναι
καὶ δύναμιν, ἀποδοῦναι δὲ πᾶσι, ἡσυχίαν πρὸς.
Plut. in Pomp. p. 434.

⁹⁵ Ἐκτείναντες δὲ μάστιγι Σύλλα, ὅτι πρὸς Πομ-
πήϊον ἐκτείναντες ἐκτείναντες, τῆς διαδοχῆς αἱ ἐκτείναντες
ἐκτείναντες γὰρ φίλοις ἀποδοῦναι ἀποδοῦναι, καὶ τὸ πάρος
ἀποδοῦναι ἐκτείναντες, τοῖς Πομπήϊος ὡς ἀποδοῦναι.
Id. ib.

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without any apparent desire of resuming it, and left to the first occupant. It should be remembered, that Sylla, who gave the first deadly wound to republican freedom, had raised a kind of aristocracy over its ruin, upon a narrow and contracted plan of his own, though he reserved the whole effective power to himself, so long as he was pleased to continue dictator. The fears, therefore, of the friends of liberty were somewhat relieved, and their hopes encouraged, by this strange and unexpected event: but Pompey stood ready to seize the vacant prize, and, by the prevalence of his power, gave great umbrage, not to the senate alone, but to the whole commonwealth; from a well-grounded apprehension, that he was preparing to follow the example of his arbitrary master ⁹⁶.

From the general turn of his disposition, we are well warranted to imagine, that he would have ventured upon the experiment without much reluctance, could he have been sure of doing it with safety; but bad as the times were, slavery was not become quite so familiar, as to be received, with a despondent indifference, from the hand of every tyrant, who had the hardiness to attempt it. The antient constitutional powers of the state still resided, nominally at least, in the senate and people; and though both were much weakened by the late civil contentions, they had each vigor enough remaining to command respect even from their oppressors. The spirit which had subdued the world was to be subdued itself only by policy and caution; by temporizing with the humors of the different parties; and by secretly undermining the foundation, while a shew was made of repairing the decayed edifice.

⁹⁶ Ἐστὸς αὐτὴ δὲ τιμὴ καὶ προσδοκία τοῦ ἀνδρός, αἰσχυρὸς ἐπὶ τῇ Συλλᾷ πολιτικῇ. Plut. in
ὁμῶς ἴσῃ τις ὑπόψια καὶ δόξαι, ὡς ἔχουσιν αὐτὸν τὸ
τραύμα, βαδίζοντες δὲ δι' ὁπλῶν καὶ μοναρχίας
Pomp. p. 440.

To prevent the suspicions of the people, he gratified their fond and ardent wishes⁹⁷, by a restoration of the tribunitian power⁹⁸; though the injustice of Sylla in destroying, was to be equalled only by the imprudence of Pompey in reviving, it. When once suppressed, better had it remained in a state of perpetual humiliation. Every one of true discernment wisely foresaw, that, instead of promoting the cause of civil liberty or public justice, it would only foment sedition, and pave the way to tyranny;—conjectures naturally suggested by the remembrance of former abuses, which the corruptions of the present age were likely to aggravate. Accordingly, from this instant, it was engrossed by a combination of bold and desperate adventurers, some of them even of patrician families, who, to qualify themselves for the office, were forced to debase their own characters, and become the adopted sons of the most vile and obscure plebeians. This was, in a special manner, the case of Clodius; whose name stands upon eternal record in the writings of Cicero, under every brand of infamy, with which ingenuity, inspired by revenge, can stigmatize arrogance and profligacy⁹⁹.

Thus

⁹⁷ Cicero, who was no friend to this popular office, as being too great a check upon the aristocracy, whereof he was the professed advocate, pretends to ascribe this impatience of the people for its restitution, merely to the abuses that had lately crept into the courts of justice; which, if true, was, of itself, a fair ground for their clamors; though, when accomplished, it does not appear to have been ever applied to that desirable purpose: “*Neque enim ullam aliam ob causam*” “*populus Romanus tribunitiam potestatem*” “*tanto studio requisivit: quam cum poscebat,*” “*verbo illam poscere videbatur, re vera iudicia poscebat.*” In Verr. Act. 1. 15.

⁹⁸ “*Pompeius tribunitiam potestatem restituit, cujus Sylla imaginem sine jure reliquerat.*” Vell. Pat. 2. 30. Το τε δημ

αξιωμα Σύλλα καταβαλὼς, ἔγνων (sc. Πόμπηος) ἀνταρ καὶ χαρίζεσθαι τοῖς πολλοῖς. ὅπερ ἡ ἀληθὴς, καὶ γὰρ ἐστὶν ὅτι τινος ἐμμανέστερον ὁ Ῥωμαίων ηγεσθὴν δῆμος, καὶ μᾶλλον ἐποδοῦν ἢ τὴν ἀρχὴν αὐτοῖς ἐπιθεῖν ἐκείνῳ. Plut. in Pomp. p. 441.

⁹⁹ Cicero, in his allusion to these events, breaks out into the following warm reflexions: “*Quis unquam tam audax, tam inimicus nobis fuisset, ut cogitaret unquam*” “*de statu nostro labefactando, nisi mucronem aliquem tribunitium exacuisset in*” “*nos? quem cum homines scelerati ac*” “*perditi, non modo ulla in domo, sed*” “*nulla in gente reperirent, gentes sibi in*” “*tenebris reipublicæ perturbandas putaverunt.*” “*Quod nobis quidem egregium, et*” “*ad immortalitatem memoriæ gloriosum,*” “*neminem in nos mercede ulla tribunum*” “*potuisse*”

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Thus did these base tools of usurpation and oppression accelerate the ruin of this illustrious republic, and, by corrupting the minds of the people with bribes and promises, keep the different orders of the state at perpetual variance with each other; while both parties, under the specious pretence of promoting the public good, maintained their own encroachments without decency or moderation; and were both equally cruel in the use of their victory¹⁰⁰.

Gabinian
law.

The advantages accruing from this affected act of popularity were not to be neglected by one of Pompey's artful and aspiring disposition. The tribunes, having now recovered their original consequence, devoted themselves to his interest, and were ready at all times to uphold his power; not so much, indeed, from any principle of gratitude or affection, but from a selfish attention to the advancement of their own fortune. An occasion soon offered, in which this influence was exerted to so great an extent, that the perseverance of one alone prevailed against the opposition of the senate, though supported, by the joint strength of the whole tribunitian body.

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" potuisse reperiri, nisi cui ne esse quidem
" licuisset tribuno. Sed ille quas strages
" edidit? eas videlicet, quas sine ratione,
" ac sine ulla spe bona furor edere potuit
" impune belluæ, multorum inflammatus
" furoribus. Quamobrem in ista quidem
" re vehementer Syllam probo, qui tribunis
" plebis suâ lege injuriæ faciendæ potestatem
" ademerit, auxilii ferendi reliquerit:
" Pompeiumque nostrum cæteris rebus omnibus,
" semper amplissimis summisque effero
" laudibus; de tribunitia potestate taceo.
" Nec enim reprehendere licet, nec laudare
" possum." Cic. de LL. 3. 9.

¹⁰⁰ " Postquam Cn. Pompeio, et M.
" Crasso consulibus tribunitia potestas resti-
" tuta est; homines adolescentes, summam

" potestatem nacti, quibus ætas, animusque
" ferox erat, capere, senatum criminando,
" plebem exagitare; deinde largiendo, atque
" pollicitando magis incendere; ita ipsi
" clari, potentesque fieri. Contra eos summa
" ope nitebatur pleraque nobilitas; se-
" natus sub specie, pro sua magnitudine.
" Namque, uti paucis verum absolvam, per
" illa tempora quicumque rempublicam
" agitavere, honestis nominibus, alii, sicuti
" jura populi defenderent, pars, quo senatus
" auctoritas maxuma foret, Bonum Pub-
" licum simulantes, pro sua quisque potentia
" certabant: neque illis modestia, neque
" modus contentionis erat: utrique victo-
" riam crudeliter exercebant." Sall. in
" Bell. Catil. 34.

The

The depredations committed by the pirates upon various parts of the Roman dominions had distressed even Rome itself, by intercepting the regular supply of provisions. During this general consternation, Gabinus proposed a law, to enable the people to chuse some eminent person of consular dignity, who should take upon himself the whole conduct of the war against those public enemies of mankind. Though the tribune cautiously suppressed the name, yet the marks of distinction, by which he pointed out the particular object of his meaning, were too significant to be mistaken¹⁰¹. The multitude immediately cast their eyes upon Pompey¹⁰²; and invested him with a command of so unlimited a nature, that instead of admiral in the present expedition, he became, in effect, a monarch over the whole empire¹⁰³.

The senate, alarmed at this dangerous instance of popular madness, would much rather have submitted to the insolence of the pirates, than to a power so extensive and indeterminate¹⁰⁴. All the members therefore, Cæsar alone excepted, strenuously united against the law¹⁰⁵; and so violently were they exasperated at the obstinacy of Gabinus, that they had well nigh made him a severe example of their vengeance upon the spot¹⁰⁶. But the capricious po-

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¹⁰¹ Αὐλὸς τις Γαούϊνος δημαρχὸς γυμνῇ ἰδοῦναι, (ὡς ἐστὶν τοῦ Πομπηίου καθήκον αὐτοῦ, ὡς καὶ ἄλλως χαρακτηροῦναι ἐκ τῆς ἐπιγραφῆς. οὐ γὰρ ποῦ καὶ ὅτι ἰσοῦς αὐτοῦ τῆς τοῦ κοινῆς ἰσοῦς) παρὶς γὰρ αὐτῆς τῆς γράμματος ἵνα αὐτοκράτορα ἐφ' ἀπαλλῆς αὐτοῦ ἐκ τῆς ἐπαυτοῦ ἰσοῦς, τρεῖς τε ἴσους ἀρξοῦναι, καὶ δυναμὶ παμπληθεῖ μετ' ὑπογράμμου πολλῶν χρησμοῦν. αὐτὸς μὲν γὰρ τοῦ Πομπηίου ὄνομα οὐκ ἔπειθ' ἰσχυροῦν δι' αὐτῆς, ὅτι αὐτῶς τι τοιοῦτον ὁ ὁμιλὸς ἀκούσῃ, ἵκνουν ἀρξοῦνται. Dio Cass. 36. 6.

¹⁰² Καὶ ἰσχυρὸν οὖν τὴν τε γὰρ ἰσχυροῦν αὐτοῦ ἐπιδοῦναι, καὶ πρὸς τοῦ Πομπηίου παραχρημα παρὶς, ὡς τῆς γυμνῆς, ἀπικλινῶν. Id. 36. 7.

¹⁰³ Ἐγράψατο Γαβίνος εἰς τὴν Πομπηίου συνηθῆναι ἰσοῦς, καὶ παρὰ τὴν αὐτῆς ἀρξοῦν αὐτῶς δίδου-

τα, καὶ δυναμὶ ἐπὶ παλλῆς ἀνδρῶν ἀνταναστατοῦν. Plut. in Pomp. p. 446.

¹⁰⁴ Αὐτὴ γὰρ (sc. γυμνῆς) παρὶς ὅτι οὐκ ἔστιν ἰσχυρὸν παρὶς, ἢ ἐκείνῃ τοσαύτην ἰσχυροῦν ἐγκλινῶναι, ἔπειθ' αὐτῶς. Dio Cass. 36. 7.

¹⁰⁵ Ἀναγνωσθέντων δὲ τούτων, ὁ μὲν δῆμος ὑπερφύως ἰδοῦναι, τῆς δὲ συγκλήτης τοῖς μεγίστοις καὶ δυνατοτάτοις ἰδοῦναι μείζον μὲν φόβον, φόβον δὲ ἀξίον εἶναι τοῦ τῆς ἐξουσίας ἀπεριληπτοῦ καὶ ἀορίστον. Ἰδοῦναι ἰσχυρὸν τῇ τομῇ πλην Καίσαρος· ὅτος δὲ συνηγορεῖ τῇ τομῇ, Πομπηίου μὲν εὐλαχίᾳ φροντίζων, ὑποδυσμῶνος δὲ τοῦ δῆμου ἐξ ἀρχῆς αὐτῶς καὶ κίωματος. Plut. in Pomp. p. 446.

¹⁰⁶ Ολίγου καὶ ἀπικλινῶν τοῦ Γαούϊνου ἐπὶ αὐτῇ τῇ συνηθῆναι. Dio Cass. 36. 7.

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pulace, ever ready to run headlong to their own destruction, warmly seconded the proposal of the tribune; and were so clamorous in its support, that even the opposition of nine, and the intercession of two others, of the same body, were utterly ineffectual¹⁰⁷. Pompey, in the mean while, with a dissimulation which always made a striking part of his political character, affected a total indifference; and though earnestly desirous of the honor, wished to appear to have it forced upon him by the solicitations of the people¹⁰⁸.

Manilian
law.
A. U. C.
687.

The grant of this favor served only as a precedent for the demand of a second. Hardly were the pirates subdued, when the tribune Manilius, another venal minister of usurpation, proposed a law to confer upon Pompey the management of the war against Mithridates¹⁰⁹, with still greater powers than had ever yet been granted on the like occasions, and that put the whole empire entirely into his hands¹¹⁰; from whence, as the historian conjectures, he acquired the title by which he was, from thence-forward, distinguished¹¹¹. This repeated effort of tribunitian audacity roused the spirits

¹⁰⁷ Τους δὲ δειμασχεύς τοὺς ἴσθ' ἀντιπαραστήσαντες τῷ Γαούριῳ. καὶ αὐτῶν οἱ μὲν ἄλλοι φερόμενοι τοῦ πλοῦτος, οὐδὲν ἀντιπαραστήσαντες Λουκίῳ δὲ δὴ τὴν Τριβύναν, καὶ Λουκίῳ Ῥωμαιοῖς, ἐτολμήσαν μὴ οὐκ ἠδυνήσαν δι' οὗτ' εἶπεν τι ὡς ὑπερχήλο, οὐδὲν πρᾶξαι. Dio Cass. 36. 7.

¹⁰⁸ Ὁ Πομπήιος, ἐπιθυμῶν μὲν πᾶν ἀρξάει, καὶ οὐδὲν γὰρ ὑποτίθει τῆς ἰαυῆς φιλοτιμίας, καὶ ὑποτίθει τῇ δημοῦ σπουδῇ, οὐδὲ τιμῇ ἐπὶ τούτῳ, ἀλλὰ ἀτιμᾷ, τὸ μὴ τυχὴν αὐτοῦ, κημιζὼν ἵσθαι, τὴν δὲ ἀντιτάξιν τῶν δυνατῶν ὄρων, ἠδυνήθη δὲ κινεῖν ἀναγκάζεσθαι. ἢ μὴ γὰρ καὶ ἄλλως ὡς ἡκιστα προσποιουμένους ἐπιθυμῶν ὡς ἠδὲ τότε δὲ καὶ μάλλον, διὰ τὸ ἐπιφθόνοιο, αἰ γὰρ ἴσθαι τῆς ἀρχῆς ἀντιπαραστήσαι, καὶ διὰ τούτῳ τὸ ευκλείας, αἰ γὰρ καὶ ἀκῶν, ὡς γὰρ καὶ ἀξιογραφηγοτάτοιοι, ἀποδειχθῇ, ἐπιδεικνύται. Id. ib.

¹⁰⁹ "Manilius tribunus plebis semper
"venalis et alienæ minister potentia, legem

"tulit, ut bellum Mithridaticum per Cn.
"Pompeium administraretur." Vell. Pat.
2. 33.

¹¹⁰ Γράφει νόμον εἰς τὴν δειμασχεύαν Μαλλίῳ—
Πομπήιον παραλαβόντα πᾶσαν—πολεμῶν Μιθρι-
δάτη καὶ Τιγράνη τοὺς βασιλεῖς, ἐχθρὰ καὶ τὴν
ναυτικὴν δυνάμιν, καὶ τὸ κράτος τῆς θαλάσσης, ἐφ'
ὧς ἐλάβεν ἐξ ἀρχῆς. τούτῳ δὲ ἢ ἐφ' ἐπὶ συλλήβδην
χρησθῆναι τὴν Ῥωμαίων ἡγεμονίαν. Plut. in Pomp.
p. 451. Dio Cass. 36. 25.

¹¹¹ Οἱ Ῥωμαῖοι, τὸν Πομπήιον μὲν ἐκαιοῦσι,
ἐπὶ οἷα περὶ Κιλικίας, ἐλκεῖν τὴν πρὸς Μιθριδάτην
πολεμὸν ἑταίρηον, ἐπὶ τῆς ὁμοίας ἐξουσίας αὐτοῦ
κράτορα εἶναι, ὅσην θέλοι συντιθεσθῆναι τε καὶ πολεμῶν,
καὶ φίλους ἢ πολεμικοὺς Ῥωμαίοις οὗς δοκιμασθῆναι
ποιεσθῆναι. ἑταίριος τε πάσης ὅσην περὶ ἐπὶ τῆς
Ἰταλίας, ἀρχὴν ἰδῶναι ὅτι οὐδὲν πᾶν παύσασθαι
πρὸς τὴν ὁμοῦ παύσασθαι καὶ ἴσθαι αὐτοὺς καὶ διὰ
ταῦτα

spirits of the aristocratical party to the highest pitch of indignation; but it was too late to think of resistance. Without regarding the consequences, the common people, bewitched by the eloquence of Cæsar and Cicero, gave their unanimous vote for the law¹¹², which may be well said to have laid the axe to the root of the constitution.

C H A P.
I.

The motives of Cæsar were to make sure of the voice of the people, which he foresaw must prevail over that of the senate; to prepare the way for future concessions of the like nature in his own favor; and by such a present accumulation of honors, to render Pompey an object of universal envy¹¹³. The views of Cicero were still more disgraceful, and unbecoming the dignity of a great statesman. Determined, at all events, to have his share in the administration, he endeavoured to impress upon each party an idea of his own consequence; inclining alternately to that which happened to be most predominant, and attaching himself, at one time, to the highest and most respectable men in the state; at another, condescending to flatter the refuse of the common people¹¹⁴.

The preceeding anecdotes, for which we are indebted to a very faithful historian, may chance to carry with them an air of calumny; especially when compared with the professions of Cicero himself, in his famous oration for the *Manilian Law*. In this elegant com-

ταδε Μιγαί στρατηγοί ονομαζέσθην. App. in Bell. Mithrid. p. 238.

¹¹² Ο δὲ ὄμιλος — ὁμοῦς ψήφισατο αὐτά, πα- γούω σφας ἐς τὰ μαλίστα τῶν τε Καίσαρος καὶ τοῦ Κικερωνος τοῦ Μάρκου. Dio Cass. 36. 26.

¹¹³ Καίσαρ μὲν τοῖς τε ἐχθροῖς αἵμα ἰδρατιύσιν, αἷτε καὶ ὄρω ὅσα τῆς βουλῆς επικρατοῦντες ἦσαν, καὶ ἑαυτῷ τοῖς τῶν ὁμοίων ψήφισθαι πόλις παρισυνασσεῖ. καὶ τοὺς καὶ τοὺς Πομπηίου καὶ ἐπιφθονωτέρους καὶ ἐπαχθυτέρους ἐκ τῶν δεδομένωι ἐὶ ποιεῖσθαι, ὅπως σφισι

πρὸς κοροῦ θάσσειν γινῆσθαι, ἠδελήσῃ. Id. ib.

¹¹⁴ Κικέρων δὲ τῶν τε πολιτικῶν ἀγῶνι ἡξίου, καὶ ἐπιδεκνύο καὶ τῶν πλεονῶν καὶ τοῖς δυνατοῖς, ὅτι ὁποῖοις αἱ σφῆς προσθῆται, πάντως αὐτοῦς ἐκαι- ξήσει. ἐπιμφοῦντι τὴν γὰρ, καὶ πῶς μὲν τὰ τοῦτον, ἐπὶ δ' ὅτι καὶ τὰ ἐκείνου, ἢ ὑπ' ἀμφοτέρων σπουδῇ ζῆται, στρατῶν. τὸς γοῦν βελτίως ὁποῖοις προσαι- ρεῖσθαι λέγων, καὶ διὰ τούτο καὶ ἀγορανομήσας μαλ- λον ἢ δημαρχήσας ἠδελήσας, τότε πρὸς τοὺς συζῆ- τῶν μάλιστα. Id. ib.

position,

B O O K
III.

position, the "divine and incredible virtues"¹¹⁵ of this present idol of his luxuriant imagination, are displayed in such glowing raptures of rhetorical enthusiasm, and his own sincerity asserted with such solemn protestations and appeals to heaven; that, from the just esteem in which posterity has ever held his sublime genius, we can hardly refrain from giving him credit upon his bare word, that he had no view to any personal advantage from the friendship of the great man, whose praises he was then celebrating; but that he recommended him to the favor of the people, from a sense only of his being the most capable of extricating his country from its present difficulties¹¹⁶. Such, however, as are conversant with his writings, particularly his epistles, in which he speaks the more free and unrestrained sentiments of his heart, will find them abounding with a variety of contradictions, not only to his public professions, but to the whole tenor of his actions. General experience will likewise convince us, that there is no line of political conduct so absurd or inconsistent, which the vanity and presumption of those, who make a trade of oratory, will not adopt, when instigated by the hopes of honor, profit, or applause.

When Pompey, who was then absent from Rome, received the news of this fresh proof of epidemical folly, he shewed every possible symptom of dissatisfaction; pretending to lament his cruel fate, which exposed him to a life of ceaseless danger and

¹¹⁵ "Divina atque incredibilis virtus imperatoris:" and soon after, "Summa enim omnia sunt, Quirites; sed ea magis ex aliorum contentione, quam ipsa per sese cognosci atque intelligi possunt." Cic. pro Leg. Man. 13.

¹¹⁶ "Testor omnes Deos, et eos maxime, qui huic loco temploque præsent, qui omnium mentes eorum, qui ad rempublicam adeunt, maxime perspiciunt, me hoc neque rogatu facere cujusquam, neque

quo Cn. Pompeii gratiam mihi per hanc causam conciliari putem, neque quo mihi ex cujusquam amplitudine, aut præsidia periculis, aut adjumenta honoribus quarum: propterea quod pericula facile, ut hominem præstare oportet, innocentia testi pellemus: honorem autem neque ab uno, neque ex hoc loco, sed eadem nostra illa laboriosissima ratione vitæ, si vestra voluntas feret, consequemur. Id. ib. 24.

fatigue;

fatigue; and deprived him of those domestic comforts which the meanest plebeian enjoyed in a much higher degree of tranquillity and perfection than himself. By these grimaces, however, he so over-acted the part, that his best friends, well convinced how much his heart was set both upon power and revenge, were scandalized at his hypocrisy¹¹⁷.

Such were the first fruits of the revival of the tribuneship, which, in the best of times, was liable to be perverted to many bad purposes; in the worst, could be applied to none that were beneficial. The two laws, therefore, lately under contemplation, may pass for very memorable events in the political history of Rome; both as they clearly develop the real designs of this enterprising commander; and as they introduced a fatal precedent, of which the future pretenders to supreme rule availed themselves with much less ceremony; till, having so frequently obtained it almost as a matter of course, they laid claim to it, in the end, as a matter of right.

It was probably owing to the anti-constitutional exercise, and shameful abuse of this important office, that Cato, an inflexible republican, and determined enemy of the usurpations of Pompey¹¹⁸, withstood the earnest importunities of his friends to offer himself a candidate for it; thinking that so great a power, like a potent medicine, should only be employed in cases of the utmost extremity¹¹⁹. But when Metellus Nepos, a furious zealot of the Pompeian faction, threatened further innovations and disturbances

C H A P.

I

A. U. C.
691.

¹¹⁷ Αὐλὸς δὲ διέξαμενος τὰ γραμματεία, καὶ συνδο-
μῶς τὰ διδασκαλία, τῶν φίλων παροίων καὶ συνηδο-
μῶν, τὰς οφρὺς λιγέλαι συναγάγει, καὶ τοὶ μὲν
παλαῖται, καὶ ἐκπνῶν, ὡς αὐτὸν βαρυνόμενος ἤδη καὶ δυσχι-
ραίων το ἀρχεῖν, φεῦ τῶν ἀντιτύλων ἀδελφῶν, ὡς ἀρε-
κρίτοι πῶς ἴνα τῶν ἀδελφῶν γινώσθαι, ἢ μηδεποτέ παυ-
σομαι ἐρεθίζομαι, μὴδὲ τοὺς φθόρον τῶτον ἐκδῶς, ἐν
ἀργῇ διαίτησμαι μῆλα γυναικός. ἐφ' οὗς λογομῶντες,
ἐνδ' οὗ παύσῃ συνήδεις ἐφίρον αὐτὴ τῶν ἐπρηνείων, γινώσ-
κοίτες ὅτι τῆς ἐμφυτῆς φιλοτιμίας καὶ φιλαρχίας
ἐπικκαύμα τῆς πρὸς Λευκῶντος ἔχον διαφοράς, μὴ-

ζῶντος ἐχαιρῶν. Plut. in Pomp. p. 452.

¹¹⁸ Οἱ περὶ Πομπηίου, ὁρῶντες αὐτὸν (sc. Καίωνα)
πῶς οὐκ ἐπιδάσκει ἀδικίας, ἀμεταπείστοι καὶ δυσπεί-
στοι αὐτῷ, διημεχαντο φιλικαῖς τισὶ συνηγορίαις,
ἢ δαιτῶν, ἢ πραγματείαις ἐξω περισπῶν. Plut.
in Cat. Min. p. 233.

¹¹⁹ Πολλὸν δὲ αὐτὸν ἐπὶ δημαρχίαν καλεῖσθαι, οὐκ
ἦτο καλῶς ἔχον μεγάλης ἐξουσίας καὶ ἀρχῆς, ὥστε
ισχυρὴ φάρμακον δύναμιν ἐν πραγμασίαν οὐκ ἀναγκαίως
ἐξαναλῶσαι. Id. p. 234.

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III.

in the commonwealth, this honest patriot immediately renounced the enjoyment of his rural and philosophical retirement, and declared himself a competitor; in hopes, by his intercession, of preventing the impending evil, though it might be out of his power to do any actual good ¹²⁰. Thus was this once sacred and respectable office prostituted to the most mischievous designs of the treacherous sons of faction: and though even Pompey did not blush to encourage their arrogance, and to strengthen himself by their influence; yet when he found it once levelled against his own authority, he soon repented of the active part he had taken in promoting its restoration ¹²¹.

Growth of
the aristo-
cracy.

Though Pompey had gained the affection of the common people, by the repeal of this, as well as of some other unpopular laws of Sylla, yet he generally passed for one of the main pillars of the aristocratical cause. Cicero, the voice of that party, in several passages of his works, speaks of him as *their own* ¹²²; as if they had an exclusive property in his friendship and protection: and, to say the truth, his eminent accomplishments rendered him a worthy object of their esteem, so long as they kept themselves beyond the reach of his ambition. During his absence, on the occasion of the Mithridatic war, Rome beheld only the lustre of his glory, without being terrified by his power. The senate exercised their authority independent of any superior; while Cicero directed their measures, and

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¹²⁰ The account given by Plutarch is, that Cato, on a journey into the country, meeting the retinue of Metellus, who was going to Rome to stand for the tribuneship, immediately ordered his own to return back; and upon his friends expressing their wonder, he replied: Οὐκ ἔστι, ὅτι καὶ αὐτὸν ὑπο ἐμπληξίας φόβος ἐστὶ Μιτῆλλος· καὶ ἵν' ἐκ τῆς Πομπηίου γυναικὸς ἀφίγμενος, εἰς τὴν πολιτείαν ἐμπιστεύεται, διὰ τὴν σκεπτικὴν, πάντα πράγματα ταρατύνει; ἐκ τῆς σχολῆς οὐδὲ ἀποδημίας καιρὸς, ἀλλὰ διὰ κρατεῖσθαι τὴν αὐτοῦ, ἢ καλῶς ἀποδιδόναι ὑπὲρ τῆς ἐλευθερίας ἀγαθὸν εἶναι. — ἐν δὲ ἐνθα εἰς ἀγορὰν κατέβαινε δημοκρα-

χίαν μίσηται, ὡς ἀνταξιοῦντος πρὸς τοὺς Μιτῆλλους. το γὰρ ἰσχυροί, ἢ ἀρχὴ πρὸς τὸ πάλαιον ἔχει πολλοὶ καὶ πρὸς τὸ πρᾶττον· καὶ πάντες οἱ λοιποὶ παρ' ἰσῆς ψήφισσιν, τὴν μὴ διλοῦντος μὲν ἐν τῷ κρατὶ ἐστὶν. Plut. in Cat. Min. p. 235.

¹²¹ Thus when Curius the tribune, a friend of Cæsar, by suddenly dissolving the senate, had disappointed some views of Pompey, the historian adds, ὅτι δὲ καὶ μάλιστα τῷ Πομπηίῳ μετιμῆσθαι, τὴν δημοκρατίαν, ἐς ἀσθενεστάτου ὑπὸ Σύλλας καθήκοντος, ἀναγαγόντι αὐτὸς ἐπὶ τὸ ἀρχαῖον. App. de Bell. Civ. p. 445.

¹²² "Pompeium nostrum."

animated their councils. This was the period in which the aristocratical power seems to have been in its most flourishing state; and to have exerted itself with the least restraint, it had ever felt since its institution by Sylla ¹²³.

The luxury, debauchery, and venality of Rome in those ages, were a disgrace to civil society, and the just subjects of invective for every writer, who dared to express the honest sentiments of his heart. They had now taken such fast hold of every part of the community, as to become wholly incurable; and were therefore a proper basis for a tyrant, whereon to erect a corrupt and oppressive government. The particular instances of these melancholy truths are too well known to need a repetition ¹²⁴. Suffice it to observe, that these were among the principal causes that led to the final ruin both of law and liberty; earnestly wishing, at the same time, to impress this tremendous example upon the minds of those, who are now treading the same perilous and deceitful ground; as they may be well assured, that similar causes will generally produce similar effects.

That the immortal Cicero himself should have been a zealous advocate for a plan of policy, so adverse to the most valuable rights of his fellow-citizens; that he who had been nursed in the arms of philosophy, who so perfectly understood the relative duties of mankind, and bore the language of liberty for ever upon his tongue, should have been the abettor of the most detestable tyrant, that was ever suffered by Providence to chastise a sinful nation; are reflexions highly degrading to human nature; and the facts from whence

Character
and conduct
of Cicero.

¹²³ "Postquam Cn. Pompeius ad bellum
"maritimum atque Mithridaticum missus
"est; plebis opes imminutæ; paucorum,
"potentia crevit. Hi magistratus, provincias,
"aliaque omnia tenere. Ipsi innoxii, flo-
"rentes, sine metu ætatem agere, ceteros-
"que judiciis terrere, quo plebem in magi-
"stratu placidius tractarent." Sall. de Bell.
Cat. 35.

¹²⁴ They are summed up together, in very
warm and pathetic language, by Sall. de
Bell. Cat. 6-9.

they arise would be scarcely credible, were they not fully established upon the faith of unconfuted history.

This attachment of Cicero to the cause of Sylla seems to have been rooted in his mind by an early habit: for, justly apprehending that the licentiousness and cruelty of the Marian faction would end in lawless despotism, he retired, when but a youth, from the busy scene of public life, to the society of persons distinguished for their virtue and learning; and did not return to Rome till Sylla was in full possession of power; considering that event, as a restoration of the government to a state of tranquillity¹¹⁵. Sometimes, indeed, he paid himself the compliment of having dared to oppose his arbitrary measures, particularly in the case of Roscius Amerinus, and of having thereby incurred his displeasure; yet it is certain that, in general, he was not only a friend to him while living, but that many years after his death, he justified the administration of Sylla, even from the consular chair; and took great pains to persuade the people, that the alterations introduced by him were for the public benefit¹¹⁶. But the eminent qualities of this illustrious orator were too much tinged both by vanity and cowardice: blemishes, which gave a very unpleasant effect to his character; and lessened the beauty of those actions, that, in appearance, were the most commendable. With the most passionate professions of love to his country, he voted honors and rewards to those, who, he well knew, were endeavouring to enslave it: he flattered and cherished the ambition of Pompey, whose power he feared; and publicly extolled the virtues of Cæsar, as well as

¹¹⁵ Ομοίως γὰρ καὶ διὰ τῆς γαστρὸς ἐκ ἀκρατοῦ ἐμπειροῦσα τὰ πρᾶγματά μοι αἰσθάνομαι, ἐπὶ τοῖς ὅμοιαι καὶ θυμητικῶν ἔλθον βίῳ, Ἑλλὰς σὺν φιλολογοῖς, καὶ προσέχῃ τοῖς μαθημασὶν ἀχρὶς ὃν Σύλλας ἐκρατῆσι, καὶ καταστάσιν τινα λαμβάνειν εὐδοξίᾳ ἢ πόλιν. Plut. in Cic. p. 442.

¹¹⁶ Τῆς ὑπὸ Σύλλαν γενομένης μεταβολῆς περὶ τῶν πολιτικῶν, ἡ ἀρχὴ μὲν ἀποκρίνεται φανερῶς, τότε δὲ τοῖς πολλοῖς ὑποχρῶν καὶ συνειδήσεως ἡδὲ τιμῆς καταστάσιν ἔχον ἢ φανερῶν δεικνύσας, ὥστε οἱ τὰ παλαιὰ διαστῆσαι καὶ μεταδιδῶναι ζήτησις, ἰδίᾳ ἵπκα ἀποκρίνεται, ἢ πρὸς τὸ βελτίστον. Id. p. 450.

solicited his favor, though he secretly envied his glory, abused his government, and ridiculed his failings. It is not likely that such duplicity could have entirely escaped the penetration of these two great and subtle politicians; for, though he was occasionally caressed by both for the sake of his oratory, he does not appear to have ever acquired the real esteem of either.

C. H. A. P.
I.

But, to take him in the most advantageous point of view, we should advert to his consulship; in which, by his prudence and vigilance, he defeated the treasonable attempts of Catiline, and his flagitious crew; and by such signal and substantial services acquitted the enviable title of Father of his Country¹²⁷. Had, therefore, his life expired with his magistracy, he would have gone to the grave with honor, and have merited a funeral at the public expence; though even the glory of having rescued the state from this most dangerous conspiracy was, in some measure, obscured, by the gaudy tinsel of self-applause¹²⁸. It is true, likewise, that the sudden and severe punishment inflicted upon the traitors, gave an alarm to the friends of liberty, as being contrary to the ordinary course of justice in criminal cases, and depriving the sufferers of their legal appeal; while the people, especially the younger part of them, attended the ceremony in awful silence, as if going to be initiated into some dreadful mysteries of aristocratical tyranny¹²⁹. This was afterwards made a ground of accusation against Cicero by the Clodian faction, for having taken away the lives of citizens without the

Behaviour in
his consul-
ship.

¹²⁷ Ωςτι τιμὰς αὐτῇ τῇ πατρὶς μεγίστας ψήφισασαδαι, καὶ ἀποταγοῦσαι πατέρα πατρίδος. Plut. in Cic. p. 464. Κατανοῶ δ' αὐτοὶ καὶ πατέρα τῆς πατρίδος ἀποταγοῦσαντος, ἐπέβησαν ὁ δῆμος. App. de Bell. Civ. p. 431.

¹²⁸ Καὶ μεγίστη μὲν ἰσχυροτέρα ἐν τῇ πόλει τότε, πολλοὶς δ' ἐπιφθονοῖς ἰαστοῖς ἐπαικῶν ἀπ' αὐτοῦ ἐργασίοντες, τῇ δ' ἐκταπεινῇ αὐτοῦ καὶ μεγαλυννῇ αὐτοῦ ἰαυτοῦ ὑπὸ πολλῶν δυσχεραίνοντες. ὅτι γὰρ βιάσθαι, ὅτι δῆμον, ὅτι δικαστῆριον ἢ συνέδριον, ἢ ἢ μὴ Κατίλι-

ων ἰδὼν θύλλαντες ἀκούσαι καὶ λυγρὰ. ἀλλὰ καὶ τὰ βίβλια τελευτῶν ἐκτελέσσει καὶ τὰ συγγραμμάτια τῶν ἐγκωμίων. καὶ τοὶ λόγοι ἰδίῳ οἷῳ καὶ χαρῇ ἰχθυῶν πλεῖστη, ἐπαχθὴ καὶ φαρτικὴ ἐκτελεῖ τοὺς ἀπορροιαίους, ὥστε τινος αἱ κηρὲς αὐτῇ τῇ σφιδῇ ταύτης ἀφραίνονται. Plut. in Cic. p. 465.

¹²⁹ Τὰ δὲ μὲν φιλοφροῦντα τὰ δρῶματα, καὶ παρρησίας αὐτῇ μάλιστα διὰ τῶν παρῶν, ὥστε ἰσχυρὰ τῶν πατρῶν ἀριστοκρατικῆς τινος ἐξέστης, τίλειν δαι μετὰ φόβου καὶ θαμβῶν δακνύται. Id. p. 468.

BOOK

III.

usual forms required by law; though it was justified even by Cato himself¹³⁰, as a necessary act of self-preservation; and opposed only by the most profligate senators, who dreaded a precedent, which they were conscious might be deservedly converted against themselves.

The reputation acquired by Pompey in the Mithridatic war, and the extravagant honors conferred upon him at Rome, had so magnified his importance, that, on his arrival in Italy, the general apprehension was, that he meant to seize the sovereign power into his own hands¹³¹. But, to the agreeable surprize of the trembling city, he immediately disbanded his army, contenting himself with the applauses of the people; and expecting that the growing disorders of the state would soon oblige them to run into his arms, and perhaps even to create him dictator, without his appearing to affect any such high compliment. He therefore prudently lay by for the present, endeavouring to keep fair with both parties, though, from his over-strained caution, he gained the love of neither; but took care to pay a particular attention to Cicero, in hopes, through his means, of pacifying the resentment of the aristocratical party, who were, at this time, his professed enemies.

The influence of this artful and insidious orator was almost absolute over the members of the senate, whose dignity he openly maintained, and whose self-consequence he flattered, with all the powers

¹³⁰ His oration is preserved at length by Sall. de Bell. Cat. 47, and the general substance of it by Plut. in Cat. Min. p. 238. who mentions it as the only one that was ever extant of Cato; owing to the care of Cicero, who employed certain clerks to take it down in short-hand. As this invention, so useful to practitioners in law, seems to have owed its origin to this memorable occasion, it may be some satisfaction to the reader to take a view of the passage at length; though it bears but little relation to the main subject of the present work.

Τῶτον μόνον ὡς Κατὼν ἐπὶ διασωζέσθαι φασὶ τὸν λόγον, Κικέρωνος τὴν ὑπάρχει τῆς διαφορῆς ἐξυτητῆ των γραφῶν σημαίνει προδιδαχῆς, ἐν μικροῖς καὶ βραχείαις τῶν πολλῶν γραμματικῶν ἐχούσῃ δυναμίν, οὐτὰ ἄλλαι ἀλλάχουσι τὴν βελαντινὴν σποράδην ἐμβολῆς. οὐκ ἔγωγε ἤσκηκα, οὐδ' ἐκείνην τῆς καλῆς σημειογραφίας, ἀλλὰ τότε πρῶτον εἰς ἴχθος τὴν κατὰ τὰς ἡμέρας λέγουσαν. Id. ib.

¹³¹ Δόγοι δὲ παλιότατοι περὶ τὴν Πομπηίου προκατεπίπτον εἰς τὴν Ῥώμην καὶ θορύβος ἦν πολλή, ὡς οὐδὲν ἀξίως ἐπὶ τῇ πόλει τὸ γράτευμα, καὶ μοναρχίας βίβλαιας ἐσομένης. Plut. in Pomp. p. 468.

of his unbounded eloquence; while he represented them, to his private correspondents, in their truer light, as the most voluptuous, insignificant, and despicable herd¹³², that ever presumed to set themselves up for politicians and rulers. From these censures, indeed, he excepts Cato; though he charges even him with doing injury to the public cause, by the severe maxims of his singular philosophy, which were calculated only for the republic of Plato, not for the corrupt and degenerate sons of Romulus¹³³. The truth was, that, having a sovereign contempt for almost the whole senate, he received and encouraged the advances made him by Pompey, in order to shelter himself from the storm which he saw impending over him. Behind his back, however, he treated him with as little ceremony or candor, as he did the rest of his colleagues; and though he had almost deified him on the occasion of the Manilian law, he made no scruple of reflecting on him in private, as having nothing in his sentiments either liberal or elevated; nothing that was not groveling and vulgar¹³⁴. Such is the disingenuous light in which this famous orator appears, when compared with himself in the senate and the closet;

¹³² In his letters to Atticus he speaks of them as wholly devoted to gluttony and luxury, and unfit for any other business; "*Nostri principes*," by which he means the majority of those eminent characters, who took the lead in the senate, "*digito se cælum putant attingere, si nulli barbati in piscinis sint, qui ad manum accedant, alia autem negligunt.*" Ad Att. 2. 1. In another, he says, "*Illud tamen velim existimes, me hanc viam optimatium post Catuli mortem nec præsidio ullo, nec comitatu tenere.*" Nam, ut ait Rhinton, ut opinor,

Οἱ μὲν παρ' οὐδεν ἑστί, οἱ δ' ἔσθ' ἑσθ' ἑσθ'.

and then he calls them "*piscinarii nostri*." Ad Att. 1. 20. Cato rebukes them after the same manner, in his speech against the conspirators; "*Vos ego appello, qui semper domos,*

villas, signa, tabulas vestras, pluris quam rempublicam fecistis." Sall. de Bell. Cat. 47.

¹³³ "*Catonem nostrum non tu amas plus, quam ego. Sed tamen ille, optimo animo utens, et summa fide, nocet interdum reipublicæ. Dicit enim tanquam in Platonis πολιτικῇ, non tanquam in Romuli fæce, sententiam.*" Ad Att. 2. 1.

¹³⁴ Thus, addressing himself to Atticus, "*Is (sc. Pompeius),—nihil habet amplum, nihil excelsum, nihil non summissum, atque populare. Veruntamen fuit ratio mihi fortasse ad tranquillitatem meorum temporum non inutilis; sed mehercule reipublicæ multo etiam utilior, quam mihi, civium improborum impetus in me reprimi, cum hominis amplissima fortuna,*

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closet; who, with the utmost indifference, sacrificed sincerity to interest, and courted fame at the expence of truth¹³⁵.

Though Pompey, as yet, affected great moderation, his ambition was never at rest; but he was constantly striving to corrupt the minds of the electors by bribery, in order to force his own minions into the first offices of the state¹³⁶. Having, by this, and such other repeated abuses of power, given very general offence, he was obliged to throw himself upon the tribunes; and to demean his character, by condescending to become a companion of youth and debauchery. In this disgraceful state was he embraced by Clodius¹³⁷, whose vices were of that enormous magnitude, as to make him a scandal even to the abandoned and libertine age in which he lived; and whose countenance rendered Pompey himself still more odious to all persons of virtue and sobriety.

About this time Cæsar returned from his government in Spain, where he had acquired more solid honors by his justice and humanity, than by his victories¹³⁸. His many liberal and amiable qualities had placed him high in the esteem of his country when very young; and created an early suspicion, that he would, in time,

" fortuna, auctoritate, gratia fluctuantem
sententiam confirmassem, et a spe malorum
ad mearum rerum laudem convertissem." Ad Att. 1. 20.

¹³⁵ For the propriety of these observations the reader is referred to his Epistles, which not only contain declarations opposite to his public conduct, but often shew him in direct contradiction to himself. The whole of this subject is likewise discussed with great accuracy by Mr. Hooke, in his history of these times.

¹³⁶ Βυλομενος ὑπὸ τοῦ ἀποδείξει Πομπηίου Αφῆρων, ἀργυρίων ἐν ταῖς βύλας ἀνηλίσκει ὑπὲρ αὐτοῦ, καὶ τὸ κατὰ τὴν ἐξουσίαν Πομπηίου πηπύς ἐλαμβάνει. Plut. in Pomp. p. 469. His friend Cicero likewise, in speaking of the same

event, observes, " Nunc est expectatio comitiorum: in qua omnibus invidis tradit noster Magnus Auli filium: atque in eo neque auctoritate, neque gratia pugnat, sed quibus Philippus omnia castella expugnari posse dicebat, in quæ modo asellus onustus auro posset ascendere." Ad Att. 1. 16.

¹³⁷ Εκπαίδων καὶ περιωδῶν οὗ Πομπηίου, παγκρατιστοὶ δημαρχοὶ προσφύγουσι καὶ προσαρτῶσθαι μισθολογίας. ὡς ὁ βέλυστατος καὶ δραστήσιος Κλωδῖος ἀναλαβὼν αὐτοὺς ὑπέστη τῇ δυνάμει. Plut. in Pomp. p. 472.

¹³⁸ Θίμωρος δὲ τὰ τῶν πολέμων καλῶς, ὅς χειρὶ ἐβράβειν τὰ τῆς εἰρήνης ὁμοιωσάμενος τὰς πολέμους καλῶς, καὶ μάστιγα τὰς τῶν χρηνοφιλιῶν καὶ δυνεστεριῶν διαφορὰς. Plut. in Cæs. p. 112.

be at the head of the government, with the universal consent of the people ¹³⁹.

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Being now much increased both in reputation and consequence, he attracted the general notice of the public. Pompey therefore, who had been long sailing upon the same troubled sea of ambition, dreading, perhaps, the effects of his popularity, found it prudent to admit him into an alliance, in which Crassus was likewise included; and thus was formed the famous triple league, so well known by the name of the *First Triumvirate* ¹⁴⁰. The only common principle, by which these great men were united, was the love of power: this equally predominated in them all; though their personal characters and dispositions were extremely different. Each likewise had his separate class of adherents; Pompey, the more steady and considerate; Cæsar, the more impetuous and enterprising; while those who warily steered between both, put themselves under the patronage of Crassus ¹⁴¹. This connexion, however, gave another incurable wound to the commonwealth ¹⁴², or rather to the aristocracy ¹⁴³, the former being already ruined by the tyranny of Sylla.

First Triumvirate.
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This triumvirate was an entirely new phenomenon, not reducible to any particular species of government that had ever yet existed in the Roman constitution; nor subject to any rules, except such as were settled by private compact between themselves. Usurpation indeed it certainly was; but still more tolerable than the

¹³⁹ Παύλῳ ἐκοίη τῇ δῆμῳ περιισθῆναι καὶ περὶ πύσσιν. Id. ib. p. 106.

¹⁴⁰ Οὕτω μὲν δὴ, καὶ διὰ ταῦτα οἱ τρεῖς τῇ τε φιλίᾳ συνῆλθον, καὶ ὅμοις αὐτῇ πεισώσασθαι, τὰ τε κοινὰ δ' ἐκείνῳ ποιήσασθαι. Dio Cass. 37. 57.

¹⁴¹ Ἡ μὲν ἐμφρὼν καὶ καθίστασα μέρος ἐν τῇ πόλει Πομπηίου ἰδιωτικῶν· τὸ δ' ὅξυ καὶ φερόμενον μετ' εὐχίριας, τὰς Καίσαρος ἐλπίσιν ἐπηκολυβῶ. Κράσσος δὲ μέσος ἐν, ἀμφοτέρωθεν, ἔχρητο. Plut. in Crass. p. 257.

¹⁴² These were the sentiments of Cato; Ὁ γὰρ Κατὼ τὰς λόγους ὑπο τῆς ὕψιρος γινόμενης

πρὸς Καίσαρα Πομπηίου διαφορὰς ἀνατραπῆναι τῇ πόλει, ἀμαρτανῶν ἐλγυν, αἰτιωμένους τὸ τελευταῖον· ὅ γὰρ τῇ γαστρί ὑπὲρ τῆς ἐχθρᾶς, ἀλλὰ τῇ συστάσει καὶ τῇ ὁμοιοιᾷ αὐτῶν τῇ πόλει πρῶτον κακοὶ γίνεσθαι καὶ μεγίστοι. Plut. in Pomp. p. 473. &c. in Cat. p. 248.

¹⁴³ Οὐ γὰρ, ὡς οἱ πολλοὶ νομίζουσιν, ὁ Καίσαρος καὶ Πομπηίου διαφορὰ τὰς ἐμφυλίων ἀπεργασατο πόλεμους, ἀλλὰ μάλλον ἡ φιλία, συστάσει ἐπὶ καταλύσει τῆς ἀριστοκρατίας τὸ πρῶτον, ὥστε ὑπὸ καὶ πρὸς ἀλλήλους διαστῆναι. Plut. in Cæs. p. 113.

general.

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general state of corruption and anarchy, which had grown out of the dissensions and cabals of the nobles. It lessened the number of tyrants, and devolved the power into the hands of three of the chief personages of the times; men of approved valour, consummate abilities, and adorned even with many virtues.

Cæsar, being now elected one of the consuls, entered upon his office with a resolution to engage the affections of the people by every act of condescension in his power; and to prevent the nobles from declaring themselves his enemies, in consequence of this seeming partiality to their rivals, gave them an assurance, that he would propose nothing which should not be for their advantage¹⁴⁴. He then prepared an Agrarian law, for establishing certain new colonies, and making a distribution of vacant lands. All former laws of this kind, as we have already seen, had been a source of bitter contention; and several of them might have been liable to exceptions, though not of that magnitude, as to justify the blood that was shed in the quarrel. Plutarch indeed endeavours to set the present law in a very unfavorable light, by charging Cæsar with the mean design of flattering only the poor and indigent, and of degrading the dignity of the consul by exercising the function of the tribune¹⁴⁵. But Dio gives a much more candid, and, probably, more true account, by representing the numerous advantages that were likely to result from it; by shewing that it was framed upon such clear principles of equity and humanity¹⁴⁶, that even

¹⁴⁴ Τῇ δὲ ἐξῆς ἐπὶ ὁ Καῖσαρ τὸ συμπαι δεσπύσας πῶντος ἐδίδουσι, ὅπως εἶπας ἐπὶ καὶ πολλοὺς σφίτισι δόξαι. βουλῆς δὲ καὶ τὰ τῶν δυνάμεων δοκεῖν (ἵνα μὴ καὶ δι' ἀπὸχρησίας αἰσθῶσι) ἀφαιρῶν, ἐπὶ σφίσι πολλοῖς, ὅτι οἱ τε γὰρ αἰσθῶσι τὸ μὴ καὶ ἐκείνοις συνοῖσι. Dio Cass. 38. 1.

¹⁴⁵ Ἡρῖδῃ μὲν γὰρ ὑπάτος Καῖσαρ ἐκδοῦν δὲ δεσπύσας τοὺς ἀποροὺς καὶ πτωχοὺς, κατοικίας πωλεῖν καὶ πόλεις ἀγρῶν ἐγγραφεῖν, ἐκβαίνειν τὸ τῆς ἀρχῆς ἀξίωμα, καὶ τροπὸν τινα δημοκρατίας τῇ ὑπατείᾳ καθίστας. Plut. in Pomp. p. 473. "In hoc consulatu

" Cæsar legem tulit, ut ager Campanus plebi divideretur, suatore legis Pompeio. Ita " circiter viginti millia civium eo deducta, " et jus ab his restitutum." Vell. Pat. 2. 44.

¹⁴⁶ Καὶ δὲ γὰρ γινώσκοντι τὴν περὶ τῆς χώρας, ἣν πᾶσι τῶν ὁμίλων κατασκευάζει, ἵνα συνογρῶνται, ὥστε μὴδε μικροὶ τι αὐτῆς αἰτιασθῶσι, καὶ οὐδε ταύτην μόντοι ἐκδοῦναι, εἰ μὴ βαλομένων σφίσι αὐτῇ ἐπὶ τῇ αὐτῇ τοῦ μὲν δὲ οὐκ ἐκδοῦναι οὐδὲ αὐτῇ ἐπὶ τῇ αὐτῇ. Dio Cass. 38. 1.

senators themselves, though frequently called upon in the house to deliver their unreserved opinions, had not a single objection to offer; but sat down in sullen silence, determined to put a negative upon it at all events¹⁴⁷. Even the wise and dispassionate Cato could only say, that things ought to go on in their old channel¹⁴⁸; for which Cæsar immediately ordered him to prison, by a stretch of power as tyrannical, as the opposition was absurd; though he immediately repented and revoked the commitment. The law, however, being powerfully supported by Pompey, was ratified by the "comitia;" and the senators were obliged to take an oath to obey it, under severe penalties¹⁴⁹. Having thus established himself in the favor of the people, he enacted several other laws; which, though not particularly specified by the historian, were most probably of a very liberal and beneficial tendency; because not even Cato offered to give them any opposition¹⁵⁰.

To prevent Pompey from taking the advantage of his intended absence, to the detriment of his interest, Cæsar gave him in marriage his daughter Julia¹⁵¹; who, by her many personal accomplishments, so endeared herself to her new lord, and became so firm a cement of the union, that the new associates, with the reciprocal

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¹⁴⁷ Ἐπεὶ μὲν οὖν τὰ γεγραμμένα ἀναστίας ἦν, ὥστε μὴ διαραῖ το γόμα ὑπεπαντίων ἐ μνηδὶα τολμήσας. καὶ γὰρ προαγγέλλων αὐτὰ ἐν τῇ βουλῇ, καὶ νομομαγεῖ ἐπεὶ ἴκατον αὐτὸν ἀπακαλόν, ἐπαρτήσας, μὴ τι τις αἰτιάται· μίλαγραφον, ἢ καὶ παντίως ἀπαλειψέω, τι γὰρ τῇ μὴ ἀρίστῃ τι, ὑποσχομένης. το δὲ διὰ συμπαῶς, καὶ παύου παύεις ἐν δυνάτοι, ὅγῃ ἐξῆς τῆς συντομίας οἷος, ἐδυσχεραίνον. καὶ αὐτοὶ γὰρ τοῦτο αὐτοῦς· ἐς τὰ μάλα ἐλυπτοί, ὅτι τοιαῦτα συγγεγραμμένους ἦν, ὥστε μνηδὶα αἰτίαν δυνάσθαι λαβεῖν, καὶ παντὸς σφῶς βαρύνειν. Dio Cass. 38. 2.

¹⁴⁸ Ὁ δὲ Κατὼν ὁ Μάρκος—τοὺς μὲν γεγραμμένους ἐνδὲς οὐδ' αὐτὸς ἐπιμαλὶν, το δ' ὅλον ἤξιον τῇ τι πα-

ροσῇ σφῶς καταραστὴν χερσὶν, καὶ μὴδὲ ἐξ αὐτῆς ποιεῖν. Id. 38. 3.

¹⁴⁹ Οὐ μόνον ἐν τῇ διανομῇ ἐκυρώσαν, ἀλλὰ καὶ προστήρησάσθαι τὴν συγκαλητὴν ὁμομαγεῖ πασαι, ἢ μὴ ἐκιδέσθαι αὐτοῖς τοὺς νόμους, καὶ βοηθήσασθαι αὐτοῖς τ' ἀναστασία πρῶτῃ· μεγάλα ταξάντες ἐπιτιμία των μὴ ὁμομαγέων. Plut. in Cat. p. 248.

¹⁵⁰ Το μὲν οὖν πολλὸς ἐκ τούτων ὁ Καῖσαρ ἀντητάσας—ἐπέσας δὲ καὶ ἀλλὰ πολλὰ διπομομαγεῖ μνηδὶος ἐκλήνουντο. Dio Cass. 38. 7.

¹⁵¹ Ὁ δὲ (sc. Καῖσαρ) καὶ τὴν ἀποδημίαν ἐν χροσὶν ὄντων ἐσομένην, καὶ τοὺς φθόνους ὡς ἐπὶ μεγιστὸς διὰ τοὺς διδομένους μίσητα, Πομπηίῳ μὲν ἐξυγνυ τὴν θυγατέρα. App. de Bell. Civ. p. 435.

Z

assistance

assistance of each other, shared the highest honors of the republic between them; and lived, apparently, in a perfect state of amity and concord. Though self-created, and, as such, unconstitutional, their administration was far from being so oppressive upon the people, as that of the aristocracy at large, who had no fixed and uniform plan of government in which they all concurred; but each individual, aiming at as much power as he could obtain, became a separate tyrant within his own province, and harassed the defenceless inhabitants without mercy or discretion; while, by their mutual jealousies and animosities, they were no less the disturbers of the peace of one another. But the triumvirs set out upon a somewhat more moderate principle: their opposition was chiefly levelled against the senate; and therefore they, at least, made a shew of supporting the cause of the people, as a counterbalance to their rivals; so that, though the antient constitution was not restored, the people, well satisfied with this state of humiliation to which their former oppressors were now reduced, contentedly reposed themselves under the shadow of liberty, without much regarding the substance.

During this time, Clodius, with the countenance of the triumvirate, took the lead among the people; pretending to assert their rights, and to devote himself to their cause; and passing some laws, that would have done credit to a more worthy author. But this affectation of popularity, void of every good principle, proved a disease as pestilential to the state, as the most arbitrary power. By strengthening his influence, it enabled him to foment sedition, to encourage vice, to oppress virtue; and, among other mischiefs, to gratify his revenge by the banishment of Cicero, who, with great spirit, had detected and exposed his wickedness.

Cæsar being now departed to his government in Gaul, Pompey bore the chief sway at home; and, having procured the recal of
Cicero,

Cicero, was, by his interposition, reconciled to the senate, and made sovereign both by sea and land¹⁵². His victorious colleague, in the mean while, having extended his arms over the hitherto unexplored provinces of Gaul, remitted such immense treasures to Rome, that he was furnished with the means of purchasing the affections of all ranks, conditions, and sexes; and having repassed the Alps, was attended in his winter-quarters by a splendid train of people, as well as of senators and magistrates; all of whom he sent back amply satisfied with his bounty¹⁵³. The league was renewed; Pompey and Crassus were fixed upon for the consulship; rewards were distributed among their dependents; and Cæsar himself confirmed in his government of Gaul for another term of five years.

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I.A. U. C.
697.

Thus did the harmony of the triumvirate continue uninterrupted, at least in outward appearance, till the death of Julia. The sudden loss of this amiable lady was a blow, severely felt by every true friend of his country's welfare. The foresight of those dreadful calamities, that were likely to ensue from this melancholy event, caused an universal dejection of spirits through the city. The people, with a generous sympathy, celebrated her funeral, and honored her memory, by every possible token of esteem, which the superstition and magnificence of these times could invent; but the

A. U. C.
699.

¹⁵² Νόμῳ κατοδὸν ἰ Κικέρων, τῇ τε βελῶ ἰσθίῳ τῇ Πομπηίᾳ διηλατῇ, καὶ τῇ σιτικῇ πορῇ σπονηροῖσι, τῶσπερ τῇ καλῇ γῆς καὶ θαλαττῆς ἰσθῷ ἰσχυρῶς Ῥωμαῖοι, κυρίῳ ἐπὶ Πομπηίῳ. ἐπ' αὐτῇ γὰρ ἐγυῖοι ἄλματα, ἰμφορία, καὶ ποτὶ διαδίοις ἰν λαοῖς, καὶ τῇ πλεονεξίᾳ πρᾶγματι, τὰ τῇ γινώ- γνῃσι. Plin. in Pomp. p. 476.

¹⁵³ Ἐκδοτοὶ καὶ ἀργυροὶ καὶ τ' ἄλλα λαφύρα καὶ ταπεινὰ ἀνέστησαν, ὡς πλεονεξίᾳ τῶσπερ πρᾶγματι μόνῳ ἐπὶ Πομπηίᾳ ἀποστέλλον, καὶ διακτείναντες διδοῦσιν αὐτῇ συγγενῶν ἀγορασμοῖς καὶ γαστρί- γους καὶ ὑπάλαις, καὶ γυναιξὶ αὐτῇ, πρὸς πολλοῖς.

ὡς ὑπερβαλλοῖς αὐτῇ τὰς Ἀλπεῖς, καὶ διαχρημα- ζοῖς ἰν Ἀνατῇ, τῇ μὲν ἄλλῃ ἀνδρῶν καὶ γυναικῶν ἀμειλλόμενοι καὶ φερόμενοι ποτὶ πλεονεξίᾳ γινώσθαι, συλλεγόμενοι καὶ διακτείναντες, ἰν ἰσχυρῶς Πομπηίῳ καὶ Κρασσῷ, ἀνδραγαθῶν δὲ καὶ γαστρίῳ ἰσχυρῶς ἰσχυρῶς ἐκδοτοὶ ἐπὶ τῇ Κεῖσας ὁρᾶν οὐδὲν αὐτῇ μὲν ἄλλῃ ἀνδρῶν ἰσχυρῶς ἰσχυρῶς ἀνδραγαθῶν ἰσχυρῶς Πομπηίῳ πρὸς αὐτῇ ἐγ- γινώσθαι μείναι μὲν ὑπάλαις αὐτοῖς, καὶ Κεῖσας συλλεγόμενοι αὐτοῖς πρᾶγματι τῇ γαστρίῳ συγγενῶν τῇ φησὶ. Id. p. 476.

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partial superiority of respect shewn, on this occasion, to Cæsar, though absent¹⁵⁴, served only to rekindle the embers of jealousy, that were still glowing, and ill-smothered, in the breast of Pompey. This general affliction was further aggravated, by the arrival of the fatal news of the defeat and death of Crassus; who, by his weight and prudence, had hitherto kept the two rivals in proper awe of each other¹⁵⁵. Thus, every common tie of union being broken almost at the same instant, mutual discord and envy succeeded in the place of confidence and friendship; till the whole empire became too narrow, to fill up the measure of their boundless ambition¹⁵⁶.

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701.

The factious intrigues of the nobility having now thrown the city into an universal confusion, the public cry was for a dictator. But Cato, ever fearful of opening the door to tyranny, endeavoured to moderate this impolitic and dangerous ardor, by proposing the creation of some other magistrate¹⁵⁷, with a superior degree of power to that of the ordinary consul, but without exempting him from the

¹⁵⁴ Παροικιασμένη δὲ Πομπηίου το σωμα θάτ-
των ἐν Ἀλβανῇ, βιασάμενος ὁ δῆμος ὡς το Ἀρειοί
σπίδιοι κατήντηκεν, οὐκ ἔφη τῆς κορῆς μάλλον, ἢ Πομπ-
ηίου καὶ Καίσαρος χαρίζομενος. αὐτῶν δὲ ἐκείνων
μῖζον ἰδοὺ μέρος ἀποβῆ Καίσαρι νῆμιν ὁ δῆμος,
ἢ Πομπηίου σπαρῆς τῆς τιμῆς. Plut. in. Pomp.
p. 480.

¹⁵⁵ Εὐδὺς γὰρ ἐκυμαίνει ἡ πόλις, καὶ πάντα τα
πράγματα σάλου ἔχει καὶ λόγος διαστατικός, ὡς ἡ
πρώτητοι παρακαλυπῶσα μάλλον ἢ κατεργασα τῶν
ἀνδρῶν τῇ φιλαρχίᾳ οὐκ ἐπιθῆσθαι. μὴ ἢ πολὺ
δὲ καὶ Κράσσος ἐν Παρδοῖς ἀπολωλὼς ἠγγέλετο·
καὶ τὸτο κάλυμμα οὐ μέγα τῇ συμπύκνυν τοῖς ἐμφύλοις
πολέμοις, ἐκποδὼν ἐγγίγονι. διδοῦτες γὰρ ἐκείνοι ἀμ-
φοτέροι, τοῖς πρὸς ἀλλήλους ἀμωσύνης ἐννοεῖ δικαιοῖς.
Id. p. 481. "Tum in gladios cædesque

"civium furente ambitu, cujus neque finis
"reperiebatur, nec modus." Vell. Pat.
2. 47.

¹⁵⁶ Οὕτως ἡ τύχη μᾶλλον ἐστὶ πρὸς τῇ φύσει. ἢ
γὰρ ἀποπληθύνῃ αὐτῆς τῇ ἐπιθυμίᾳ, ὥστε τοσού-
τοι βαδὸς ἡγέμονιας καὶ μεγάλος ἐννεύχημας δύναι
ἀνδρῶν ἢ ἐπισχεῖν, ἀλλ' ἀκκοῖας καὶ ἀναγνώσκουσας
ὅτι τριχῶς δὲ πάντα διδάσκει τοῖς Θεοῖς, ἱεραὶς δ'
ἐμμορῇ τιμῆς, ἑαυτοῖς ἢ ἐνομιζοῖς ἀρκύν δύναι πρὸς τῇ
Ῥωμαίων ἀρχῇ. Plut. in Pomp. p. 481.

¹⁵⁷ Ὑπερὶ δὲ πόλεως ἀναρχίας γινώσκουσας, καὶ
ὡλεῖσθαι πρὸς τοῖς πρὸς τῇ δικτατορίας λόγῳ ἐγγιγνόμεν
ἐκαμπτέρων, φοβηθεῖς δὲ πρὸς Κατῶν μὴ βιασθῶσιν,
ἐγίνωσαν ἀρχὴν τινα τῇ Πομπηίου πρὸς αὐτοῖς ἐνομιμῶς
ἀποτρίψαι τῆς ἀρχῆς καὶ τυραννικῆς ἐκείνης. Plut.
in Pomp. p. 482. Dio Cass. 40. 50.

coercion of the law¹⁵⁸. Though unwilling to be the leader upon so critical a point, he readily seconded the motion of Bibulus, to appoint Pompey *sole consul*¹⁵⁹; but even this was a desperate remedy at best; and would never have been applied, had the true spirit of the old constitution still continued in its full vigor. The precedent was wholly new, but was eagerly embraced by the aristocratical party; who, knowing that Pompey had been always less attentive to the people, than Cæsar, thought this a fair opportunity of detaching him from the popular side, and of enticing him over to their own. In this they were not deceived: for, proud of this unexpected honor, Pompey no longer regarded the interest of the commons, but regulated his future conduct entirely by the opinion of the senate¹⁶⁰.

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His first effort of authority was very properly levelled against bribery; one of the most epidemical vices of that libertine age, and the chief source of the present evils¹⁶¹. He likewise enacted several other laws to regulate public trials, and to make all public officers accountable for their behaviour, during the time of

¹⁵⁸ Ἡ βουλή δὲ συνέη μετὰ δούε, καὶ ἐς τοὺς Πομπηίου ἀφωρῶν, ὡς αὐτὰ καὶ σφῆν ἰσομῶν διατάγματα (χρηζέτω γὰρ αὐτοῖς ὡς αὐτοῖς τὰ παρὰ τοιαύτης διατάξεως) Κατὰ τοὺς δ' αὐτοὺς μεταδιδάξαντες, ὑπάρχοντες ἰδίῳ χωρὶς συναρχοῦ, ὡς ἀνέχοντες τὴν μετ' ἐξουσίας διατάξεως, ἀρχῶν μόνος, τῇ δ' ἐνδυνάμει ὑπαίου App. de Bell. Civ. p. 440.

¹⁵⁹ Πάσαι μὲν ἀρχῆς πολλοὶ αἰρωμένοι ἀναρχίας, Πομπηίου δὲ μὴδὲν βίλτιος ἀρχῆς ἐν ταραχαῖς τῆς καὶ ταῖς νομῶν. διζαμῆς δὲ τῆς βουλῆς, καὶ ψηφισαμένης ὅπως ὑπαίου αἰρωμένης ὁ Πομπηίου ἀρχῶν μόνος. Plut. in Pomp. p. 482. "Tertius consulatus soli Cn. Pompeio, etiam aduersantium antea "dignitati ejus delatus est." Vell. Pat. 2. 47.

¹⁶⁰ Πῶς μὲν δὲ τοῦτο καὶ ἐπὶ μὴδὲν ἀλλοῦ γινόμενοι ἐπράξαν, καὶ ὅπως αὐτοὺς πεποινηκαὶ ἰδοῦναι, ἐπειδὴ γὰρ ἦτορ τοῦ Καίσαρος τῇ ὁμίλῃ προσετίθει. ἀποφύγειν τι αὐτοὺς ἀπ' ἐκείνου παύσασθαι καὶ σφί-

τημιόδοις ἡλπίσαν. καὶ ἰσχυρὸν ὅλῳ τῇ τε γὰρ καὶ καὶ τῇ παραδεδῆκεν τῆς τιμῆς ἐπαρθῆναι, οὐκ ἔστι οὐδὲν ἐς τὴν τῶν πολλῶν χάριν ἐβουλεύσειν, ἀλλ' ἀκρίτως πάντα τὰ τῇ βουλῇ ἀριστοκράτεια ἐπράξαν. Dio Cass. 40. 50.

¹⁶¹ Ὁ δὲ Πομπηίου δικαὶς ἐντυγχάνει τῶν τε ἀλλὰ ἀμαρτημάτων, καὶ μάλιστα δωροδοκίας καὶ δεικνύει. ἰδοὺ γὰρ ἐντυγχάνει αὐτῷ νομοῖς τὰ κοινὰ ἀρχαῖα, ἐν τούτῳ καὶ τὴν ἰσὺν ἐξῆν ταχίαν. App. de Bell. Civ. p. 441. Ἐπὶ δὲ ταῖς δικαῖς τῶν δωροδοκῶν καὶ δεικνύει ἐπὶ τῆς καὶ νομῶν γραφῆς κατὰ ὡς αἱ κρίσεις ἐγίνοντο, τὰ μὲν ἀλλὰ σίμῳς ἐβραβεῖν καὶ καθάρως, ἀσφαλῆσαι αἶμα, καὶ κόσμον καὶ ἰσχυρίαν, αὐτῷ προκαθήμενι μὲν ὅλῳ, τοῖς δικαστηρίοις παρὶχον. Plut. in Pomp. p. 484. "Ejus "consulatus omnem vim in coercionem "ambitus exercuit." Vell. Pat. 2. 47. Dio Cass. 40. 52.

their

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their magistracies¹⁶⁴. These auspicious beginnings diffused a ray of hope over this gloomy scene of distraction, and seemed to promise a return of order and tranquillity.

But the inordinate love of power is the poison of public virtue ; and high honors too often vitiate even the purest hearts ¹⁶. With all this pretended concern for the chaste and uncorrupt administration of justice, his partiality upon the trials of his friends was notorious and shameful ¹⁷. Neither was he less scrupulous in his legislative character : for, though the author of several very commendable and wholesome laws, he was generally one of the first to violate them ¹⁸ ; or, which was equally scandalous, to reserve some exceptions out of them, in favor of himself. Of this we have a remarkable instance in the renewal of a law, to require candidates for offices to be present at the elections ; and, in another, to prohibit such as had borne any magistracies within the city, from being appointed to any foreign provinces before the expiration of five years. For, at the moment of passing the same, he accepted, without blushing, a continuation of his own command in Spain for five years ; and finding that Cæsar's friends were offended at the former law, procured a dispensation for him to stand for the consulship during his absence. Thus did this *great* man, as he hath been usually called, administer the government according to his own absolute pleasure ¹⁹ ; or, rather,

rather, prostitute the dignity of this venerable office, to the maintenance of his ambitious and self-interested pretensions⁶⁷. Such, likewise, are the signal services done to the public in this *third consulate* of Pompey, which Cicero has been pleased to compliment with the title of *divine*⁶⁸.

Having shown how far he dared insult a mighty people, by such unconstitutional exertions of unlimited power, he condescended to assume a partner into the consulship for the remainder of the year ; though he still affected a degree of superiority, and took upon himself to prescribe rules of conduct to the succeeding magistrates. In all this he was implicitly supported by the senate, or, more properly, by a select and aspiring faction ; partly, out of revenge to Caesar, who had not been quite so complaisant to their sublime order ; and partly, because Pompey seems not to have molested them in the pursuit of their pernicious designs ; which, in their ideas, was a restoration of the languishing republic ¹⁶⁹.

To this unpromising crisis had the state of public affairs advanced, when Pompey, on his return from Naples, after a dangerous illness, was met by an immense concourse of all ranks and degrees,

[illegible]

167 Τὰς δὲ βουλευτὰς ἀποκρίσας ἐπιστάμενα, οὐκ οὐ
ἀλλὰ τὰς αὐτὰς χρόνους τοῖς ἑσπέραις καὶ ἡμέραις
ἐν Πιερρίᾳ ἀποστειλόμενα. App. de Bel.
Civ. p. 442.

168 Thus, speaking of having promoted

the foregoing law in favor of Cæsar, at the instigation of Pompey, he adds, "Etiam
" a Cnæo nostro, in illo *divino* tertio con-
" sulsu." *And* Act. 7. 1.

120 Καὶ ὁ Πομπηϊός, ὡς εἶδεν τα χρῆσις τῆς μο-
ναρχικῆς διαφθορᾶς, τὸν Σκεπτικὸν συνάραχον εἰς τὸ
θεῶμα τῶ ἐτοῦς ἐποιεῖτο· καὶ μίαν ταύτ' ἔπειρον εἰς τὴν
ἀρχὴν καθιγάμενον, οὗτος ἦτοίς σφίμερ καὶ ἰδυάμενος·
καὶ σφίσι περ ἐν Ῥώμῃ τότε Πομπηϊός, ἡ γὰρ εὐνοία
τῆς βουλῆς βαλὺται εἰς αὐτοῦ ἐποικίαν, ζήλωρ τε τῶ Καί-
σαρος, εἰς οὗτον αὐτῇ παρὰ τὴν ἰδίαν ὑπαίτιαν ἀρχη-
μενον, καὶ ὅτι ποσούσαι ὁ Πομπηϊός τὴν σωλτικὴν
ἐξέως ἀπαλάσσει, καὶ οὕτω σφίσι παρὰ τὴν ἀρχὴν
φορτικῶς ἡ ἐπαχθὴς γίνεται. App. de Bell. Civ.
p. 442.

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to congratulate him upon his recovery; which event, without any apparent connexion with so dreadful a consequence, has been considered as one of the principal causes of the distractions which soon after ensued. The excessive adulation paid him on this occasion so swelled him up with pride, that, lost to his usual prudence and circumspection, he treated Cæsar's power with the highest contempt; pretending to be able to pull him down with more ease than he had raised him ¹⁷⁰; and, in this frenzy of arrogance, boasting, that "in whatever part of Italy he should but stamp his foot, whole armies both of infantry and cavalry would instantly arise ¹⁷¹." This unprovoked insolence could not fail to touch the delicacy of Cæsar's honor; to fill his mind with resentment; and to blow up the flame of that fatal civil war, which soon consumed the tottering remains of this once majestic commonwealth.

Such is the faint and superficial sketch of this splendid, but inauspicious, æra, called by the historian the *third age of Rome* ¹⁷²; which may be considered as a kind of intermediate state between republicanisim and monarchy; and was frequently exposed to the tempestuous extremes of each. A state, of all others, the most uncomfortable and unpropitious to the humble and industrious part of the community, whose liberties wholly depended upon the daily caprice

¹⁷⁰ Thus do we find this remarkable event recorded by his biographer. 'Ωςτι την κορυφήν και τοσαύτης ολιγωρίας δια το θαρρύν ενέλε μέτος, αυτε και ποριαν, διαμα καλλίον ειαι και λαμ-
πρότατοι. υδρος μύλοι τυτο ληγεται των απεργασα-
μινω τον πολέμον αιτιωσ ιλαστοι γινωσθαι. Φρονημα
γάρ εισελθειν υπεραϊρον άμα τη μεγαλει της χαρας της
απο των πραγμάτων λογισμης και την εις ασφαλες
αι τα εντυχηματα και τας πράξεις αυτε διμενη
ευλαβειαν προειμενος, εις ακραϊον εξεπαιε θρασος και
πειροφροσιν της Καισαρος δυναμεις, ως ητι οπλων
τε αύλοι, ητι τινος εργωνδης πραγμαλειας δημομονος,
αλλα πολυ εαδιον καθαιρησων η πολέρον ηυξησε τον
ανδρα. Plut. in Pomp. p. 486.

¹⁷¹ 'Ουτω δ' ην ο Πομπηϊος επηροη, και τοιαυτης
ετι και των διδοτων τον πολέμον πατηγίλα, και τας
λεγοήας, αι ελαυη Καισαρ επι την πολιν, ουκ όρει
δυναμεις εις αύλον αμυνησαι, μηδινω τη πρεια των
και διακεχυμενος αμειδων εκιλεσθαι. 'Οπη γαρ αι,
εφη, της Ιταλιης ενω κρυσω τη οδοι την γην, αναδυ-
σονται και πικραι και ιππικαι δυναμεις. Id. ib.

¹⁷² "Hæc est illa tertia ætas populi Ro-
mani transmarina, qua, Italia progredi
ausus, orbe toto arma circumtulit. Flor.
3. 12.

of their imperious governors, without any fixed principles of government, whereby to regulate their obedience. Whatever, therefore, was the name of the tyrant, whether Marius or Sylla, Pompey or Cæsar; whether the power of the senate was to yield to the people, or that of the people to the senate; each party was perpetually striving which should give laws to the other; each obtained the victory in turn; while the wounded constitution lay bleeding at every vein. Having no foreign enemies to contend with, so formidable as themselves, they embrued their merciless hands in each others blood; and thus, expiring amid the blaze of their own glory, became striking examples to the world of this awful truth, that "the favors of fortune are the most dangerous snares; and "the smiles of prosperity more pregnant with mischief, than the "frowns of adversity".

C H A P.
II.

C H A P. II.

Origin of the Imperial Government under Julius Cæsar.

POMPEY and his confederates were arrived at the summit of their power in Rome; while the common people, wearied out with their tyranny, were waiting with anxious expectation for the return of Cæsar, who had united the hitherto unexplored regions of Gaul to the Roman empire, and spread the terror of his arms to the extremities of the western world¹. He was now on his return to his own country, to take possession of the consulship, for which, as we have already seen, he had been permitted

¹⁷³ Τα μεγάλα δώρα της τύχης ἔχει φόβον,
Καὶ τὸ παντ λαμπρὸν οὐκ ἀκινδυνὸν κυρεῖ.

Johnf. Gr. Epigr. 78.

αριστοκρατικῶν Πομπηῶν παροῦσι προσδεμένῳ, τῶν δὲ
δημοτικῶν Καίσαρα παρακαλῶν ἐκ Γαλατίας ἐν
τοῖς ὅπλοις οἶα. Plut. in Ant. 69.

¹ Ἐπεὶ τὰ Ῥωμαίων πρᾶγμαλα διῆν, τῶν μὲν

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to become a candidate during his absence. But his opponent, whose affections varied with every blast of self-interest, dreading the predominancy of his influence, prevailed upon the senate to refuse him that well-earned reward of his victories, unless he would first resign his government, and disband his army³.

Though Cæsar could not, in prudence, comply with such treacherous conditions⁴, he gave many unequivocal proofs of the moderation of his own demands; and strove in the most earnest manner to bring about an accommodation upon equal terms; offering to lay down his arms, if Pompey would do the same, and, returning each to his private station, agree to submit their disputes to an amicable conference⁵. But the evil spirit of Discord, envying the tranquillity of Rome, took such firm possession of the hearts of the aristocratical party, that they would not suffer the letters of Cæsar to be opened; till Antony, in virtue of his tribunitian power, having read them publicly in the senate, they were found to carry such strong internal marks of the sincerity of his intentions, and of the reasonableness

³ This we learn from Cælius in a letter to Cicero; "Cn. Pompeius constituit non pati C. Cæsarem consulem aliter fieri, nisi exercitum et provincias tradiderit." Epist. ad Fam. 8. 14.

⁴ "Cæsari autem persuasum est, se saluum esse non posse, si ab exercitu recesserit." Id. ib.

⁵ Thus says Cælius (who was none of Cæsar's friends) in the same letter; "Fert illam tamen conditionem, ut ambo exercitus tradant." Id. ib. Of this we have a further account from Cæsar's own mouth, in his oration to his mutinous army at Placentia; Καίτοι ἐγὼ γε ποσούτην περιμεῖναι τοὺς δεικνύμεναι τοὺς Πομπηίου ἐμὴν, ὥστε καὶ ἐς δικῆν πολλὰκις αὐτοὶ προκαλεσθῶναι· καὶ ἐκείνη γὰρ μὴ ἐδίδου ἐνερτικῶς ὑπὸ τοῦ συνιδότος διακρίθηναι, παῖλα μὲν τοὶ δῆμοι, παῖλας δὲ τῆς συμμαχίας ἐλπίσαι διὰ τούτου προσδοκῶνται. Dio Cass. 41. 32.

Thus, in another place, speaking of himself; "Ad omnia se descendere paratum, atque omnia pati reipublicæ causa. Proficiscatur Pompeius in suas provincias; ipsi exercitus dimittantur; discedant in Italia omnes ab armis; metus e civitate tollatur: libera comitia, atque omnia respublica senatui populoque Romano permittatur." Cæs. de Bel. Civ. 1. 9. & 3. 90. To which we may add the testimony of the following authors, who cannot be suspected of partiality to his cause; "Nihil relictum a Cæsare, quod servandæ pacis causa tentari posset: nihil receptum a Pompeianis." Vell. Pat. 2. 49. Οὐ μὲν ἀλλ' ἢ γὰρ παρὰ Καίσαρος ἀξίως, τὸ προσχῆμα τῆς δικαιολογίας λαμπρὸν ὕμνον ἤνυσεν αὐτὸς τοὺς καταδιδόντας τὰ ὅπλα, καὶ Πομπηίου τὰ αὐτὰ παραλαβόντας, ἀμφοτέρους ἰδίᾳ γενομένης ἐνισχυομένους τὴν παρὰ τῶν πόλεων ἀγῶν. Plut. in Cæs. p. 133.

of

of his proposals, that many of the fathers instantly changed their opinions, and declared themselves converts to the cause of Cæsar⁵.

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The question being now put, whether both the competitors should be obliged to dismiss their troops, it was received, with the loudest clamors of approbation, by almost the whole assembly. Cicero likewise, undertaking the office of mediator, prevailed upon Cæsar's friends to abate some part of their demands, with which even Pompey himself would, most probably, have acquiesced⁶; had not the invincible scruples of Cato, and the violence of the consul Lentulus, put a final stop to all further hopes of a reconciliation⁷. Each party therefore prepared to appeal to the valour of his own arm. Cæsar, with a mind full of serious and solemn meditation upon the consequences of his attempt, passed the Rubicon; and thus the fatal die was cast⁸, which determined the future fortune of Rome, and laid the foundation of an absolute monarchy.

A. U. C.
704.

In the midst of the deep concern, which every generous mind must feel at this triumph of despotism, there is one consideration behind, that will afford inexpressible comfort to every sincere

⁵ Τας Καισαρος επιτολὰς ἡ προσομινοῦν, οὐδὲ πῶτε ἀναγιγνωσκόμεναι τῇ συγκλητικῇ αὐλῇ (sc. Λατῶν) ἰσχυρὸν διὰ τὸ ἀρχὴν ἀπὸ τῆς, καὶ πολλὰς μεταβολὰς τῇ γυναικὶ, δίκαια καὶ μετρία Καισαρος αἰσίων ἀφ' ἧς ἐγγράφῃ δοξασθεῖς. Plut. in Ant. p. 70. et in Pomp. p. 488.

⁶ Κικέρων ὁ ἐξήλωσε, ὅτι παρὼν ἐκ Κιλίκιας καὶ διαλλαγῆς πρὸς τὸν Πομπηϊόν, ὁ δὲ τ' ἄλλα συγχωρῶν, τὴν γρατιώδεις ἀφῆκε καὶ Κικέρων μὴ ἐπὶ τῇ Καισαρος φίλῃ συνεσθῆαι ἐπὶ ταῖς ἐρημίαις ἐπαρχιαῖς, καὶ γρατιώταις μοῖσις ἐξαισχυρίσας ποιῆσαι τὰς δαπάναις. Πομπηϊὸς δὲ καμπίομενος καὶ δίδωσας, ὡς φησὶ Λατῶν ἐκ τῆς ὑπαλειψῆς, ἀλλὰ καὶ τῆς βουλῆς Λατῶν καὶ Κυρῆων προσηλασπισθῆαι, ἐξέλασαν αὐτοῦ. Plut. in Cæf. p. 134.

⁷ Λατῶν πρῶτος ἡ δοκὴ καὶ Πομπηϊὸς ὅμως καὶ Καισαρὰ τὰ ὅπλα καταδιδόναι καὶ τὰς δυνάμεις ἀφίεναι. ταῦτα ἰδεῖν λαμπρὸς τῇ γυναικὶ ἀπαύρις, καὶ μὴ βοήθῃ πραιποσίτου τοῦ Λατῶν, ἤντις ἐπι-

ψηφισθῆναι μὴ βούλομενος διὰ τὴν ὑπαλειψῆν αὐτοῦ ἴτερος οἱ Καισαρος φίλοι πρῶτον ἐπιτιμᾶς δεκόμενος αἰσίων, αἷς ὅ, τὴν Κατὴν αἰσιντῆν, καὶ Λατῶν ὑπαλειψῆν ἐξέλασε τῆς βουλῆς τοῦ Λατῶν. Plut. in Ant. p. 70. And again; Πομπηϊὸν δὲ δυσκολευόμενος, ἐπισθῆσαι οἱ Καισαρος φίλοι θάτεραν ἀφίεναι. Λατῶν δὲ ἀνταρῶντος, καὶ Κατῶν αὐτοῦ ἀμαρτάνειν τὸν Πομπηϊόν ἐξαπατῶμενος βούλομαι, οὐκ ἰσχύει αἱ δαπάναις περὶ. Plut. in Pomp. p. 488.

⁸ Ἐπὶ τῷ Ῥυβικόνῳ ποταμῷ ἰδὼν, ὅς ἀφῆκε αὐτῇ τῇ δεδομένη ἐπαρχίᾳ, ἐπὶ σὺν τῇ καὶ διαμνησθῆναι αὐτὸς ἀπὸ τῆς ἰσχυρῆς συλλογισμοῦ τοῦ μεγάλου τοῦ τολμασμοῦ. ἔτα ὡς τῇ δὲ πρὸς βαδὸς ἀφίεναι ἀρχὰς ἀπὸ πρῶτον τινος ἰαυλῆς, μὲν τῇ λογισμῷ, καὶ παρακαλῶντος πρὸς τὸ θῆναι, καὶ τούτων μοῖσις Ἑλλήνων πρὸς τῆς παροίας ἐκδοσας, ἀπὸ τῆς αὐτοῦ, διδόνει τὸν γράβον. Plut. in Pomp. p. 489. et in Cæf. p. 135.

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Christian ; when he reflects, that the present æra, unpropitious, as it really was, to true liberty, was introductory to those great and important changes, both in the political and religious system of the world, wherein the eternal welfare of the whole race of mankind was much more materially interested, than either the ignorance of paganism is aware of, or the presumption of infidelity will acknowledge. The antient monarchies of the East were now passed away, and swallowed up in the immense empire of the Romans, which had long existed in prophetic vision ; and which was itself preparatory to the manifestation of the King of Glory ; who was soon to put all earthly thrones, principalities, and powers in subjection under his feet⁹. While, therefore, we look with detestation and abhorrence upon the two rival potentates, subverting every law of society, to accomplish the ends of their own ambition and avarice ; we cannot but adore the goodness of the Almighty Lord of the Universe, who was thus “ turning the fierceness of man to his praise ;” and making the worst passions of the human heart subservient to the purposes of his Divine Providence.

Such revolutions, as now happened in the Roman state, though, in outward appearance, not more astonishing than the other ordinary occurrences of the times ; and though easily accountable from a variety of causes, both natural and artificial ; supply an inexhaustible fund of useful reflexion to philosophic and serious minds ; and teach them, that the numerous fluctuations in human governments are not the bare effects of the narrow and selfish policy of the princes of this

⁹ Thus are these wonderful designs of Providence disclosed, in the most precise terms, by the inspired interpreter of Nebuchadnezzar's dream : “ And the *fourth kingdom* shall
“ be strong as iron ; forasmuch as iron
“ breaketh in pieces, and subdueth all
“ things : and as iron that breaketh all these,
“ shall it break in pieces, and bruise. And

“ in the days of these kings shall the God of
“ heaven set up a kingdom, which shall
“ never be destroyed : and the kingdom
“ shall not be left to other people, but it
“ shall break in pieces, and consume all
“ these kingdoms, and it shall stand for
“ ever.” Dan. 2. 40. & 44.

world; but that they have their ultimate origin in the will of God, C H A P.
II. who condescends to promote the inscrutable designs of his infinite wisdom, by the daily intervention of secondary causes. Considerations like these dignify the study of profane history, by pointing out its connexion with the sacred truths of religion; and thus make it of service in meliorating the heart, at the same time that it gratifies the curiosity, and enlarges the understanding. By persuading ourselves, that all our doings are under the invisible guidance of our Heavenly Director, we may easily console our minds amid those turbulent scenes of discord, which so frequently interrupt the good order of government, and the harmony of society; and humble the pride of the most potent nations of the earth. Fortified by these assurances, we may look, with devout and pleasing hope, for the coming of that kingdom, when these animosities will be buried in universal peace and good-will to each other; and where sovereign power will be exerted to no other end, than the perfection of our happiness; a kingdom, which shall endure for ever, when time itself shall be lost in the abyss of eternity.

The calamitous effects of these civil dissensions constitute the most familiar part of the Roman story, and must therefore be trusted to the reader's recollection; while we confine ourselves to such observations, arising therefrom, as bear a more immediate relation to the subject of our proposed inquiry.

The attention of the whole world, as far as it was then known, was now engaged by this contest between the two candidates for universal empire; of whom it has, in turn, been observed, that "the one could bear no equal, the other no superior." To which of the two the different parts of this description more particularly refer, cannot easily be decided at this remote distance of time; especially as we find them interchangeably applied to each, according to the private opinions, or prejudices, of those authors, who have taken

up

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up the question; and who, on both sides, are very respectable¹⁰. The utmost, therefore, we can venture to affirm is, that, as ambition is for ever insatiable in its desires, and irregular in its operations, each probably exerted himself either with more or less violence, or moderation, in proportion as his passions were affected by the temporary exigencies of his situation; consequently, that the character of each varied, apparently, with the times¹¹. But, in truth, the contrast between them does not lie so much in the

¹⁰ We shall endeavour to bring the most considerable of these into one point of view, and then leave the decision to the reader's own judgment. It is said of Cæsar, that when, in his passage of the Alps, his friends made some ludicrous observations upon the violent factions and animosities which subsisted in a paltry village of that country, he replied, "That he had rather be the first man there, than the second in Rome." *Λιγίσι δὲ, τὰς Ἀλπεῖς ὑπερβαλόντες αὐτῷ, καὶ πολλοῖσι τὴν βαρβαρικὴν οὐκ ἐμμενοῦν ὑπὸ ἀνδρῶν παλινάσσειν ὀλίγων καὶ λοπτρῶν παρεχόμενης τῆς ἐταίρας, αἶμα γὰρ καὶ μὲν παίδας, ἢ παῖ, φάται, καὶ αὐτὰν δὲ τῆς ἰσθμῆς ὅτι ἀρχὴν φιλοτιμίας, καὶ οὐκ ἀνδρείου ἀμύλλαι, καὶ φθόνου τῶν ἀνδρῶν πρὸς ἀλλήλους; τοὶ δὲ Καίσαρος σπουδασθεῖα πρὸς αὐτὸς ἔπειν, ἔγω μὲν ἐβόλοντο παρὰ τούτοις εἶναι μάλλον σπουδῆς, ἢ παρὰ Ρωμαίων διπλοῦς. Plut. in Cæs. p. 111.* In another author we find the following comparison between them: *Γνωμὴ μὲν γὰρ τοσούτοι ἀλλήλων διεφθον, ὥς τοι Πομπηῖος μὲν, οὐδὲν ἀνδρῶν δούλορος, Καίσαρ δὲ, καὶ σπουδῆς παῖσι εἶναι ἐπιδυμῆ καὶ ἐμὲ, παρ' ἐξήκοντα τι τιμῆσαι, καὶ ὀδυροῦν πρὸς αὐτῷ, φιλοδοξοῦν τι ὑπερβαλεῖν τῇ δὲ οὐδὲν ἐμμεναι καὶ ἀπολιπὼν ἀρχοῖ, καὶ μισοῦσιν ἐπὶ πλάσσει, τὰς τι τιμῆς αὐτοῖς ἰαυτῇ δίδω. Dio Cass. 41. 54.*

On the other hand, Cæsar himself remarks; "Quod neminem dignitate secum exsequari volebar (sc. Pompeius)." *De Bell. Civ. 1. 4.* But this, being the observation of a professed adversary, may be liable to the suspicion of partiality: we shall confirm it, therefore, by the testimony of an eminent poet; who, being his enemy upon

principle, will be more easily believed, when speaking in his favor:

"Nec quenquam jam ferre potest, Cæsare
" priorem,
" Pompeiufve parem."

Luc. Pharf. 1. 125.

Add to this a character drawn by a candid historian, though far from partial to Cæsar; "Nam neque Pompeius, ut primum ad rem publicam aggressus est, quenquam animo parem tulit; et in quibus rebus primus esse debebat, solus esse cupiebat. Neque eo viro quisquam aut alia omnia minus, aut gloriam magis concupiit." *Vell. Pat. 2. 33.* Again, of the same person, "Particeps dominationis neque fuit quifquam; neque si pati potuisset, orbis terrarum bello concussus foret." *Sall. ad Cæs. de Rep. ord. ep. 2.* And lastly, "Nec hic (sc. Pompeius) ferebat parem, nec ille (sc. Cæsar) superiorem." *Flor. 4. 2.*

¹¹ This seems to be the idea entertained by the historian: *Τὰ μὲν δὲ ἔργα, δι' ὧν ἡλικίον παῖδ' ὅσα ἐβελόνη κατασφραῖνει, ἀμφοτέρω ὁμοῦ καὶ ἀναγκὴ ποιοῦν. ἀδύνατον γὰρ ἢ αὐτῷ καλῶντι τινὲ μὴ οὐ τοῖς τε οὐκ οὐκ ἐπὶ πολέμου, καὶ τοῖς ὀδυροῦν ἐπὶ τοῖς ὁμαφύλοις ἀρχῇ, καὶ πολλὰ μὲν χρηματὰ ἀδικῶς συλῶν, πολλοὺς δὲ καὶ τῶν φίλων ἀπορῶν ἐκτελεῖ. ὥς εἰ καὶ ταῖς ἐπιδυμῆσι δολοῦσιν, ἀλλὰ τὰς γὰρ ἀρχαῖς, δι' ὧν ἀποκλῆσθαι αὐτὸς ἡλικίον, ὁμοῦ οὐκ. καὶ διὰ τοῦδ' ὕψους τινος ἀλλήλους, καὶ πάλιν πολλὰς δυνάμεις ἐπὶ σφαιρῶν, καὶ ἐκ χρημάτων τελευτῶντες ἄλλοι. Dio Cass. 41. 54.*

degree of power, of which both were equally covetous; as in the use made of it by each, in the course of their respective administrations.

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Pompey, by his more constant residence in Rome, had much the fairest opportunities of securing a personal interest with his fellow-citizens, especially among the nobility, who were the professed enemies of the cause of Cæsar; but, like a true disciple of Sylla, he persevered in the pursuit of his favorite object, without the least regard to the moral propriety of those means which he employed in the acquisition. The most laudable virtues, therefore, of his heart were too often sullied by fickleness and dissimulation; which induced him to adopt a great diversity of resolutions, and to temporize with every party that occasionally flattered his expectations. Tenacious, above all things, of his darling power, he would rather risk the success of his own enterprises, than suffer it to be controverted or diminished. Under the influence of this predominant principle, he refused the command of a large fleet to Cato, either on a suspicion of his own, or a suggestion of his friends, that this determined republican, from his known hatred to the government of a single person, would oblige him, on the very day he had conquered Cæsar, to lay down his arms, and submit to the laws of his country¹².

The same impolitic jealousy is thought to have been the cause of his neglecting, on a particular occasion, to give battle to his antagonist, when he might have done it with the greatest prospect of advantage;

¹² Εἰδὼς δὲ καὶ μάστιγα τῆς γυναικὸς καταφυγὸς, εἶδεν, ὅτι γινῆται κυριὸς τῆς καὶ αὐτῆς δυνάμεως, ἥς αὐτὸς ἰδοὺς γινώσκειται Πομπηίου. ὥρμησε μὲν γὰρ ἐγγιγνέσθαι τῷ Κατῷ τὴν τῶν πλοῦν ἡγεμονίαν· ἥσας δὲ πειλάσσειν μὲν καὶ ἐλατῆρας αἱ μάχαι, λυθυσθῆναι δὲ καὶ κατασκοπῆναι καὶ ἀφραδίαν, συμπεπληθῆναι ταχὺν δὲ ἰσχυρῶς, ἢ διδάχθαι ὑπὸ τῶν φίλων, ὥς ἐν ἐστὶν ἀφαιλάσθαι Κατῷ, πάσης πολιτικῆς ἐλευθέρωσαι τὴν πατρίδα, καὶ γινῆται κυριὸς τῆς καὶ αὐτῆς δυνάμεως, ἥς αὐτὸς ἰδοὺς γινώσκειται Πομπηίου. ὥρμησε μὲν γὰρ ἐγγιγνέσθαι τῷ Κατῷ τὴν τῶν πλοῦν ἡγεμονίαν· ἥσας δὲ πειλάσσειν μὲν καὶ ἐλατῆρας αἱ μάχαι, λυθυσθῆναι δὲ καὶ κατασκοπῆναι καὶ ἀφραδίαν, συμπεπληθῆναι ταχὺν δὲ ἰσχυρῶς, ἢ διδάχθαι ὑπὸ τῶν φίλων, ὥς ἐν ἐστὶν ἀφαιλάσθαι Κατῷ, πάσης πολιτικῆς ἐλευθέρωσαι τὴν πατρίδα. Plut. in Cat. p. 272.

whereby

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whereby he justly provoked his soldiers, to upbraid him with pride and vain glory, for chusing to appear at the head of his army like a king of kings; and for affecting the parade of having his tent daily frequented with a retinue of general officers¹³. Whatever, therefore, might have been the hopes of those who so warmly attached themselves to his cause, there is no great probability, that, even had he been successful, he would ever have restored any part of the antient constitution; but would still have held the reins of government in his own hands, under the title of consul, dictator, or some other civil character, that would have put him in full possession of the power he aimed at, without alarming the fears of the people¹⁴.

Julius Cæsar's first appearance in public life was distinguished by every advantage, that could be derived from high birth, and an accomplished education¹⁵. To these were added a frank and open heart; a profuse generosity; a courteous and affable behaviour; qualities, of all others, the best calculated both to soften the appearance of his vices, and heighten that of his virtues: which procured him an early popularity¹⁶; and gave some ground to the suspicion that he affected the sovereignty¹⁷, perhaps, before even his own ambition had been awakened to so flattering an object.

His alliance with the family of Marius had laid him open, when very young, to the resentment and hatred of Sylla; at the same time that it made him the refuge of all those who had been sufferers

¹³ Οἱ δ' ἄλλοι παῖς (sc. πλὴν Καίωνος) ἐκακίζον τὸν Πομπηϊὸν φυγομαχίᾳ, καὶ παρωξύναν, Ἀγαμέμνονα καὶ βασιλεὺς βασιλείᾳ ἀποκαλυψίς, ὥς δὴ μὴ βυλομένοι ἀποδιδόναι τὴν μοιραρχίαν, ἀλλ' ἀγαλλομένοι, ἡγεμόνων τούτων ἐξηρτημένοι αὐτὸν καὶ φοιτῶντες ἐπὶ σκηνῇ. Plut. in Cæf. p. 144.

¹⁴ Οὐτε γὰρ ἐκείνος ὁ μέγας Πομπηϊὸς, ἢ Καίσαρα καθύλει, ἢ πικρὸν βίβαιως προσησθαι τοῖς τομοῖς τὴν δύναμιν, ἀλλ' αἱ τὰ πραγματεῖα καθίζει, ὁ πάλλας νομαλὶ καὶ δικαιοσύνης, ἢ τινος ἀλλῆς μαλακώτερης ἀρχῆς παραμυθιστοῦ τοῦ δήμου. Plut. in Bruto, p. 245.

¹⁵ Λιγδαὶ καὶ Φύλαι πρὸς λόγους πολέμους ὁ Καίσαρ ἀρίστα, καὶ διαπονησάμενος φιλοτιμοτάτα τῇ φύσει. Plut. in Cæf. p. 102.

¹⁶ Πολλὴ τῆς περὶ τὰς διξίσεως καὶ ἐμίλλας φιλοφροσύνης εὐνοία παρὰ τῶν δημότων ἀπήλθε, θεραπευτικῆς παρ' ἡλικίας υἱός. πρὶν δὲ τις καὶ ἀπὸ διπλοῦ καὶ τραπεζῆς, καὶ ὅλως τῆς περὶ τὴν διαίτην λαμπρότητος αὐξανομένη κατὰ μικρὸν αὐτῇ δυνάμει εἰς τὴν πολιτείαν. Plut. in Cæf. p. 103.

¹⁷ Κικέρων εἰλεγε τοῖς ἄλλοις ὥπασιν ἐπιβουλῶν αὐτῷ καὶ πολιτευμασὶ τυραννικῶν νορῶν διατοίαν. Plut. in Cæf. p. 103.

from

from the oppressions of the aristocratical faction; as well as of many others, who, under pretence of maintaining the true spirit of republican liberty, were enemies to all regular subordination whatever. Thus, without any natural disposition of his own, to invade the rights, or interrupt the happiness, of others (a character which his determined murderer was ready to allow him), he suffered the most dissolute members of the community to take shelter under his wing, and to abuse his power, to the support of their own excesses¹⁸. But in nothing did he so essentially injure his own reputation, as in his conduct with regard to Antony; whom he received into his confidence, and loaded with honors; but, by conniving at injustice and profligacy, brought universal disgrace upon his own government, which, in itself, deserved any name rather than that of tyranny¹⁹. So cautious ought all sovereigns to be, on whom they confer any particular marks of their favor; as the very best and mildest may chance to forfeit the esteem and veneration of their subjects, from the misconduct of their ministers.

The period we are now contemplating presents to our imagination a superb and venerable edifice, shaken from its very foundation, and threatening each moment to crumble into ruins; while the great men of the times, instead of exerting their endeavours to repair and support it, were each contending who should first bring it to the ground, and seize upon the spoil. By whatever name these were known; whatever pretences they held forth; whatever party

¹⁸ Οὐκ αὐτοῖς (sc. Καίσαρ) ἀγοῖα καὶ φιλία ἡρώατο τῶν πτυγχαιοῦν, καὶ κακῶς ἐπὶ γυναιξὶν παῖδας ἀνδρῶν, ἀλλ' ἴτερον δυνάμει οὐκ αὐτὰ ἀλλοτρίαις ἡντι. καὶ ὅλως τὴν Καίσαρος ἀρχὴν, πᾶσι μᾶλλον ἢ τυραννίδα δι' αὐτοῦ κίνοιο φανίσαν, οἱ φίλοι

¹⁹ Ἀλβινὸν δημαρχοῦν τὰ σφατεῖα καὶ τὴν διαβάλλον' ὡς Ἀλβινος, ἀπ' ἐξουσίας μεγίστης ἀμαρτανύει μεγίστῃ δόξῃ, τὴν πλοῖσιν αὐτῶν ἐλάσσει. Plut. in Brut. p. 251. Plut. in Ant. p. 71.

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they espoused; empire was the sole and avowed aim of them all²⁰. In the midst, therefore, of so many bad, there is some merit in not being the worst. Though Cæsar had very heartily concurred in the destructive schemes of the triumvirate, which completed the fate of the constitution; yet it ought to be recorded, in common justice to his memory, that he shewed many early signs of a sincere intention to alter his behaviour; and to make some atonement for those mischiefs, of which the unhappy necessities of the times had made him too active an instrument.

From the moment that he began his expedition into Gaul, we are told by his biographer, that he adopted an entirely new plan of conduct; that he employed his whole time in raising the glory of the Roman arms; while, by his humanity to the conquered nations, and munificence to his fellow-foldiers, he exalted his own character above the most illustrious generals who had ever yet adorned the annals of Rome²¹.

By such laudable arts did he facilitate his advancement to that sovereign power, to which, it is not denied, that he always aspired; and gained a victory over the prejudices of the people in general, long before his decisive triumph over his enemies, in the plains of Pharsalia. These are circumstances which ought, at least, to render him less odious in the sight of an impartial world; and to distinguish him from the general herd of those aristocratical tyrants,

²⁰ Κάσσιος δὲ τῶν σφοδρῶν ἀνδρῶν καὶ θυμωιδῶν, καὶ πολλὰ πρὸς τὸ κερδαλεῖον ἐκφύρομενοι τὴν δικαίαν, παῖς μᾶλλον ὅσοιο πολέμου καὶ πλοῦτος καὶ κινδυνεύων, αὐτῷ τινὰ δυνάμειαν κατασκευάζομενοι, οὐκ ἐλευθερίαν τοῖς πολίταις. τὰ μὲν γὰρ ἐπὶ τούτῳ πρῶτον Κικαί, καὶ Μάρκοι, καὶ Καρβόνες, ἀδελφοὶ ἐν μισθῷ καὶ λείαν προδιδόντες τὴν πόλιν αὐτοῖς ἐκ τῆς ὑπὲρ τυρανίδος ἐκπληρώσεως. Plut. in Brut. p. 245.

²¹ Τοιαῦτα μὲν ἐν λέγεται γινώσκειν τὰ πρὸ τῶν Γαλατικῶν. ὁ δὲ τὴν πόλιν ὡς ἐπολεμῶν μετὰ ταῦτα, καὶ τὴν γαλατικὴν αἰς ἡμετέραν τὴν Κελτικὴν χροίαν, ὥστε ἀλλήν ἀρχὴν λαβὼς αὐτῷ, καὶ κατα- γὰρ ἐκ τῆς ἰσχυρῆς βίης καὶ πλεονεξίας αὐτοῦ, οὐκ ἐπὶ δὲ τῶν μακρῶν τεταρασμένων ἐφ' ἡγεμονίᾳ καὶ μεγάλῃ γένεσιν ἀπολιποῦσα πόλιν καὶ γα- λικῶν ἀπιδίξεν αὐτοῖς. Plut. in Cæs. p. 115.

who

who were oppressing their fellow-citizens, and plundering the public without remorse or moderation.

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It is not a little surprising, that an interval of more than eighteen centuries should not yet have cooled the passions of political disputants; nor prevented them from calumniating a man, whose empire has long ceased to exist; and in the ruin of whose good name they can, at this time, have no possible interest. Unfortunately, however, the opinion now entertained of the character of Julius Cæsar has been almost made a test of patriotism; a writer, therefore, who should presume to stand up in his defence, might run the hazard of being pointed out as an advocate for arbitrary power.

Prejudices, indeed, of this kind are, in themselves, much too despicable to receive a serious refutation; though, it must be confessed, they derive their origin, in very early times, from the records of his avowed enemies; who had not less ability to oppose his arms, than wit to blast his reputation. Appearing, therefore, under these real disadvantages in the eye of posterity, from the authority of such evidence as cannot be totally disregarded, it is no more than an act of justice to his memory, to clear it, as far as may be, from some part of the aspersions; by contrasting his virtues with his vices; and evincing from thence, that, though he might be unequal to the praises which his flatterers so liberally bestowed, he did not deserve the many calumnies which were dictated by the indiscriminate malice of his adversaries.

Our judgment, upon questions of this nature, must, in some measure, be directed by the character of the times. Allowances, therefore, ought to be made for that unrestrained licentiousness of a military life, wherein most of the great men were then trained; and which, though it rendered Cæsar less delicate in the pursuit of the favorite objects of his ambition, had not yet so far shed its baneful

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influence over his mind, as to harden him against the tears and sufferings of his desolated country. His vices were the evil fruits of an age universally corrupt; but his virtues were more peculiarly his own, the native inmates of a heart abounding with generosity.

His unexpected passage of the Rubicon had thrown a sudden damp upon the confidence of his opponents; and obliged his rival to provide for his own safety, by a timid and precipitate flight to the extreme parts of Italy. This rapid success put him, at once, into peaceable possession of the capital of the empire; and gave him full opportunity of usurping whatever degree of power best suited the views either of his revenge or ambition.

But, instead of defiling the city with blood, or assuming the state of an absolute monarch, he assembled together such senators as were then remaining; addressed them with benignity and tenderness; and requested them, once more, to invite his stubborn compeer to enter into a treaty of peace, upon terms of equality; a proposal that was unhappily declined, either from the fear of Pompey's resentment at being deserted; or from a suspicion (most surely groundless) of the sincerity of Cæsar's declarations.²²

All prospect of accommodation being now desperate, he was obliged, even in his own defence, to pursue his flying enemy to the memorable field of battle; where both armies stood, for a while, in deep and anxious silence, doubting which should strike the first blow²³; and while the eyes of the two noble rivals were overflow-
ing

²² Εἰς τὴν Ρώμην ἀπεγρέψαν, γιγνομένης ἐν ἡμέραις ἐξηκοντῇα πάσης ἀναιμωτοῦ τῆς Ἰταλίας κυρίου. ἐπὶ δὲ καὶ τὴν πόλιν ἰὺρα μάλλον ἢ προσειδοκὰ καθίστανται καὶ τῶν ἀπο βουλῆς ἐν αὐτῇ συχρῆς, τούτοις μὲν ἐπισηκὴ καὶ δημοτικὰ διελεχθῆ, παρὰπαλὼν αὐτῆς καὶ πρὸς Πομπηίου ἀποσπῶνται ἀνδρᾶς ἐπὶ συμβάσεσιν περιπα-
σαί· ὑπὲρ δ' ὕδατος, οἷτις φερόμενοι Πομπηίου ἐγκα-

ταλειμμένοι, οἷτις νομιζοῦντες οὐχ ὕτω Καίσαρα φροῦν, ἀλλ' ἐν πᾶσι λόγοις χρῆσθαι. Plut. in Cæs. p. 138.

²³ Ὡς δὲ σφίσι ἐτοιμὰ πάντα ἦν, ἐπὶ πολὺ καὶ ὡς ἀνέμοι ἢ βαθρὰ σιωπῇ· μάλλοις ἐπὶ καὶ οὐρανὸς καὶ εἰς ἀλλήλους ἀποβλεπόμεναι, ὁπότερος ἀρξέι τῆς μά-
χης. App. de Bell. Civ. p. 475. The same author,

ing with tears, at the thoughts of the terrible consequences of so fatal a conflict.

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The well-known event having left him in full possession of the empire over the whole Roman world, the use he made of this victory redounded no less to his honor, than the bravery by which he obtained it. When Pompey's head was presented to him, he turned, with grief and horror, from the bloody spectacle; he punished his murderers; dedicated a temple to his memory; received his scattered adherents, and engaged them to himself by every act of kindness and beneficence; and, in his letters to his friends at Rome, declared, that the most agreeable consequences of his success were, that he was now daily enabled to preserve great numbers of citizens, who had taken up arms against him²⁴.

Having totally subdued the Pompeian party, he returned to Rome; where he was received with every token of respect, that adulation, mixed with fear, could possibly suggest²⁵. He was

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author, having described the whole of this dreadful interval with a solemnity very suitable to such an important occasion, concludes, 'Ὁν ἰδυμὸν μὲν ἰκάνει, μετανοίας τε δύναμιν ἐν τῇ παροῇ ἐπιπλάττει, καὶ ὡς ἰσομῆτος ἐκείνῃ τῇ ἡμέρᾳ τῶν ἐπὶ γῆς ἡ πρώτη ἢ τελευταία, ὡς τοσούτῃ ἀμφιβολίας ἀρξαι. καὶ φασὶν αὐτῶν ἰκατέρων καὶ δακρυσαί. Id. p. 476.

²⁴ Ποσειδώνῃ καὶ Ἀχιλλεῖ ἐκλάσει θανάτου τῆς ἐς Πομπηίου παρανομίας. App. de Bell. Civ. p. 484. Τῇ δὲ κεφαλῇ τῷ Πομπηίῳ προσφερομένην οὐχ' ὑπέστη, ἀλλὰ προστάξει, ταφῆναι, καὶ τὴν αὐτὴν τιμὴν βραχὺ, πρὸ τῆς πολέως περὶ τῆς Νημειῆος ἐκάλειτο. Id. ib. Εἰς δὲ Ἀλεξανδρίαν ἐπὶ Πομπηίῳ τιθῆναι καταχθινίαν, Θιοδότῃ μὲν ἀπὸ τῆς κεφαλῆς φερούσῃ, τῇ δὲ σφραγίδι διζήμενος τὴν ἀνδρὸς κατεδύκνυσεν· ὅσοι δὲ τῶν ἱταίων αὐτὴ καὶ συνηθῶν πλῆθος μετὰ τὴν χώραν ἰαλῶν κίον ὑπὸ τῇ βασιλείᾳ, πάλιν ἐνεργήσῃ καὶ προσήγαγόντο· τοὺς δὲ φίλους ἐς Ῥώμην ἐγγραφῆναι ὅτι τῆς νίκης ἀπολαύουσι τὸ τοιοῦτον καὶ ἡδίστον, τὸ σωζέειν τινὰς αὐ

τῶν ἀπολεμηκόων πολιτῶν αὐτῶν. Plut. in Cæf. p. 150.

²⁵ 'Ὁ δὲ Καίσαρ ἐς Ῥώμην ἡπικύβητο, καὶ ἐμφύλια πᾶσι κατέλειπε, ἐπὶ φόβου καὶ δόξης οἷας αὐτὸς πρώτῃ· ὅθεν αὐτῷ τιμῆς παύσαι, ὅσα ὑπὲρ ἀνδραποχίας ἀμείβετο ἐς χάριν ἐπικουρίῃ. App. de Bell. Civ. p. 494. Plutarch has ascribed many of these extravagant compliments to the mere malice of his enemies, who thus endeavoured to expose him to the envy of the public: Τιμῆς δὲ τὰς πρώτας Κικέρωνος ἐς τὴν βουλὴν γράψαντος, ὡς ἀμωσύγῃως ἀνδραποχίῃ ἢ τοιοῦτον, ἴτεροι πρῶτον· διττὴς ἐπιβολῆς, καὶ διαμυλῶμενοι πρὸς ἀλλήλους, ἐξηγασάμενοι καὶ τοὺς πρῶτοις ἐπαχθῆναι τοὺς ἀνδρά καὶ λυπῆναι γίνεσθαι, διὰ τοὺς οὐκ οἶον καὶ τὴν ἀποπείαν τῶν ψήφισμένων. ὡς οὐδὲν ἥτις οἰοῦνται συναγαγεσάμενοι τῶν κολακιστῶν Καίσαρος τῆς μισοῦσας, ὅπως ὅτι πλείους κατ' αὐτὴν προφασίς ἐχρῶντο, καὶ μετὰ μεγίστων ἐγκλημάτων ἐπιχρῶντο δόκοντι. Plut. in Cæf. p. 159.

saluted

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saluted Father of his Country; was created perpetual dictator, and consul for ten years; his person was declared sacred²⁶; he had the power of making war and peace²⁷; and all magistrates were bound to take an oath, that they would never reverse any of his decrees²⁸. In conferring these unconstitutional favors upon him, the people acted with a policy admirably well adapted to their servile situation. Still fond of the empty name of liberty, they were desirous that he should appear to receive them from their free suffrages, and govern them under the color of law; well-knowing, at the same time, that he was in a condition to exercise whatever authority he pleased, whether they chose to consent to it or not²⁹.

As far as it was possible for a free people thus to divest themselves of the most precious rights of nature, they had now transferred them all to Cæsar, and had made him absolute by the sanction of the legislature. Fortunately, however, for the peace of Rome, he better understood the true value of political liberty, than those who had thus servilely renounced it. His moderation kept pace with his power. His humanity extorted the admiration and applause of the whole nation; and even Cicero was observed to be one of the most forward in voting him honors, and celebrating his praises³⁰; though

²⁶ Ανέστη δὲ καὶ πάτερ πατρις, καὶ δέχεται εἰς τοὺς ἰαυτοὺς βίον ἡρώδη, καὶ ὑπάτος ἐς δέκα ἐτη· καὶ τὸ σῶμα ἱερόν καὶ ἀσυλόν ἐστιν. App. de Bell. Civ. p. 494. Οὐ μὴν ἀλλὰ καὶ πρὸς τὴν τύχην τὸν ἄνδρα ἐγκεκλικότας, καὶ διδύμους τοὺς χαλκίους, καὶ τὰς ἐμφυλίους πολέμους καὶ πικρὰν ἀνάγκην ἡγήμενοι τῆς μοναρχίας, διαλαίωρα μὲν αὐτοὺς ἀπειδεῖαν διὰ βίον· τούτῳ δὲ ἢ ὁμολογούμενῃ μὲν τυραννίδι, τῇ ἀτυπιεζομένῃ τῆς μοναρχίας τὸ ἀκαταπαύστον πρόσλαβοντες. Plut. in Cæf. p. 159.

²⁷ Πολέμους καὶ εἰρήνης κύριος. Dio Cass. 42. 20.

²⁸ Τὰς ἀρχὰς τοῦδὲ καδισταμείας οὐκ ἐπὶ μὴδὲν τῶν ὑπὸ Καίσαρος ἐπιζομένων ἀντιπράττειν. App. de Bell. Civ. p. 494.

²⁹ Οὐχ' ὅτι καὶ αὐτὸς πᾶς ἑαυτοῦ οὐ τούτῳ λαβὼν εἶχεν, ἀλλ' ὅτι καὶ ἐν νόμῳ ἤδη τῶν αὐτοῦ ποιεῖν δοξᾷ· καὶ ἢ μὲν σπουδαίῳ καὶ τούτῳ καὶ πρὶν ἐπ' ἐκείνῃ, ὅτι καὶ δύναμιν τῆς ἀπειλῆς εἶχον· (τοὺς γοῦν πολέμους οὗς ἐπολέμησεν πατρίδος οὐλοῦν κατὰ ἑαυτοῦ ἀπειλῶν) ὁμῶς δ' οὐκ αὐτῇ (πολεῖται γὰρ καὶ αὐτοτελείᾳ ἐπὶ δοκεῖν εἶναι ἡδύλον) ταῦτα τὴν ὁμῶς ἐληφισαῖον, καὶ τὰ ἀλλὰ πᾶσι, ἃ καὶ ἀκούων αὐτοῦ εἶχεν ἐδύνατο. Dio Cass. 42. 20.

³⁰ Σπάντως εἰς αὐτὸν θρασυτείας ἵπκα τὸν Καίσαρος κατῴμι, καὶ πρῶτος ἢ τῶν συναγορευομένων ταῖς τιμαῖς, καὶ λέγειν αἰετὶ καίτοι εἰς τοὺς ἀνδράς καὶ τὰ πρῶτα ἱέρεια φιλοτιμώμενον. Plut. in Cic. p. 484.

well-known to be of the number of those, who were the most en-vious of his glory. His pardon and munificence were extended to his most inveterate enemies; even to those who afterwards became his murderers³¹: infomuch that the senate, stricken with the lustre of virtues so truly benevolent and godlike, decreed a temple to Clemency, in honor of his lenity³². These are facts, which loudly proclaim the genuine hero; and, spite of envy, entitle him to a place among the most respectable names of antiquity.

Excepting the share he had borne in the civil wars, his conduct was, generally speaking, irreproachable³³; and even in these he was hurried on much more by the violence of a distempered age, than by any evil or malevolent inclinations of his own: on the contrary, his very enemies were ready to acknowledge, that, in mercy and equity, he excelled all the other conquerors in those bloody contests³⁴.

³¹ Thus immediately after the battle of Pharsalia, πολλοὶ καὶ τῶν ἐπιφανῶν ἀδελφῶν ἰδὼν καὶ Βρούτῳ καὶ ὁ Κλεόπας αὐτοὺς ὑπερῶν, πρὸς ὃν ἀρχαίαι μὴ φαινομένη μὲν ἀγωνίσασαι, συνδιντοὶ δὲ καὶ παρα-γνωρῶντες πρὸς αὐτοὺς ἡσθῆναι διαφερόντως. Plut. in Cæsar. p. 150.—And again, ἀφελὲς πολλῶν τῶν ἀντιπολεμικῶν πρὸς αὐτοὺς, τοῖς δὲ καὶ τιμαῖς καὶ ἀρχαῖς, ὡς Βρούτῳ καὶ Κάσσιῳ, πρὸς τῶν πρὸς ἐστρατεύων γὰρ ἀμφοτέρω. Ib. p. 159.—“Moderationem clementiamque, cum in ad-“ministratōne, tum in victōria belli civilis“admirabilem exhibuit.” Suet. in Cæsar. 75.—“Simultates contra nullos tam graves“exceptit unquam, ut non occasione oblata“libens deponeret.” Ib. 73.—“In ulciscen-“do natura lenissimus.” Ib. 74. Thus Cicero, to the same effect; “Reliquos am-“plissimos viros, et sibi ipsis, et patriæ reddi-“dit, quorum et frequentiam, et dignitatem“hoc ipso in confesso videtis.” And again, “Vicit is, qui non fortuna inflammaret“odium suum, sed bonitate leniret: nec

“qui omnes, quibus iratus esset, eosdem“etiam exilio, aut morte dignos judicaret.” Pro Marc. 5 & 10.

³² Τῆς Εὐμειρίας μὲν ἐκ ἀπο τροπῆς δικαιοῦν χαριστικοὶ ἐπὶ τῇ πραότητι ψηφισασθαι. Plut. in Cæsar. p. 159. Καὶ πῶς ἐψηφισαίτο πολλοὺς αὐτῷ γινώσκειν καὶ ἀγαπᾶν, καὶ κοινὰ αὐτῷ καὶ Εὐμειρίας, ἀλλήλους διζήμενοι. οὕτως ἰδιοικιστὰς μὲν ὡς δούλους, ἐχθροὺς δὲ σφισιν ἐμμελῶς γινώσκειν. App. de Bell. Civ. p. 494. In which it is observable, that this author so far differs from Plutarch, as to ascribe the compliment not so much to love, as to fear.

³³ Ἐπὶ ταῖς γὰρ ἀλλὰ τῶν ἐμφυλίων αὐτῷ πολέμων πῶς ἐσχηκότες ἀνυγλῆσαι παρῆλθεν. Plut. in Cæsar. p. 159.

³⁴ Thus Cicero, speaking of his generosity in pardoning Marcellus, adds, “Et“ceteros quidem omnes victores bellorum“civilium jam ante æquitate, et misericor-“dia viceras: hodierno vero die et ipsum“viciisti.” Pro Marc. 4.

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III.

From the conclusion of this turbulent period, he was still more at leisure to display the real goodness of his disposition; and to give a fuller scope to the exercise of his political abilities. To shew his reliance upon the affections of the people, he refused to have a guard round his person (the usual refuge of tyrants), with this manly declaration, "that it was better to die at once, than to live in perpetual apprehension³⁵." Safe, as he then thought, under the protection of his own benevolent character, he distributed his rewards and honors, according to the respective pretensions of the several orders of the people; and encouraged the pleasing hope, that he meant to lay the foundation of his dominion in the hearts of a willing world³⁶.

He now applied himself, with a truly patriotic zeal, to the completion of the great object of his wishes; which was to close the wounds of his bleeding country; to reform and new-model the broken constitution; and to repair the many injuries it had suffered from the late unhappy divisions: and had not the untractable arrogance of the aristocratical faction, alike unfriendly both to regal and popular government, disconcerted his best endeavours, there is every reason to believe, that he would have given them a more liberal and rational scheme of civil policy, than had ever been known among them since the days of Romulus: and have convinced them, that his desire was "not to command, but to preside; not to tyrannize, but to govern³⁷."

To

³⁵ Τὸν φίλον ἀξιοῦν αὐτὸν δορυφορεῖσθαι, καὶ πολλὰν περὶ τούτου περιχόσιν ἰαυῖας, καὶ ὑπερβαίνειν ὡς βελτίον ἐστιν ἀπαξ ἀποθάνειν ἢ αἰεὶ προσδοκᾶν. Plut. in Cæf. 160.

³⁶ Τὴν δ' ἑννοίαν, ὡς καλλιγεῖν ἰαυῖα αἶμα καὶ βίβαιοτατον ἑαυτῇ περιβαλλομένον φυλακτῆριον, αὐδὲς ἀνελαμβάνει τοὶ δῆμον ἰγίασεν καὶ σιτηρησίους, τὸ δὲ στρατιωτικόν, ἀποικίας·—τὸν δὲ δυνάων τοῖς μὲν

ὑπατίας καὶ στρατηγίας ἐκ τῶντοις ἐπηγγελῆσθαι, τὰς δὲ ἄλλαις τισὶν ἐξουσίαις καὶ τιμαῖς παρμυδιῶν· πᾶσιν δὲ ἐλπίζειν ἐνδίδω, μηδ' ἐννομενός ἀρχὴν ἐκείνων. Plut. in Cæf. p. 160.

³⁷ Dion Cassius, who seems to have taken great pains to preserve the speeches supposed to have been made by the several personages whom he introduces into his history, has put one

The laws, originally confined within the narrow limits of the Twelve Tables, being now increased to a very inconvenient magnitude, by the numerous additions of succeeding legislatures, he proposed to take a general review of the whole body, and to reduce the most useful of them, into one concise and uniform collection¹⁸: but the confusions of the times, and his own premature fate, unhappily rendered this design abortive.

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II.

Many vacancies having been occasioned by the late civil wars, among the senators and magistrates, he greatly augmented their number; though he is charged with having debased the dignity of this venerable assembly by too large a mixture of Gauls and other foreigners; as well as by reinstating several who had been degraded by former censors and judges, for bribery¹⁹.

Willing, likewise, to keep upon good terms with the people, he indulged the "comitia" with the nomination of half the magistrates, the consuls only excepted; reserving to himself the power of recommending the other half to their favor by a kind of *letters missive*²⁰; which, at the same time that it set straiter bounds to the constitutional freedom of election, was a tacit acknowledgment of their ancient privileges.

one in the mouth of Julius Cæsar, in which he allows him to justify his own conduct to the senate, in the following remarkable words; ἀλλ' ὅτι προτέρων ἀλλως πῶς ἐφρονεῖσα, (ὡς πῶς καὶ αὐτὰ τὰ ἔργα τεινέριαι) οὐκ οὐ πολὺ μαλλὼν προθυμιοῦμαι μετὰ πάσης ἐπισκευῆς, μαλ' οὐκ οὐκ ἀποζῶν ὑμῶν, ἀλλὰ προσηύειν οὐδὲ τυραννῶν, ἀλλ' ἡγεμονῶν. 43. 7.

3^a "Jus civile ad certum modum redigere, "atque ex immensâ diffusâque legum copiâ "optima quæque et necessaria in paucissimos conferre libros." Suet. in Cæsar. 44. Livy gives a similar account of the confused state of the laws in the same age, "Decem tabularum leges perlatæ sunt: qui "nunc quoque, in hoc immenso aliarum su- "per alias acervatarum legum cumulo, fons

"omnis publici privatique est juris." 3. 34. 39 "Senatum supplevit, patricios adlegit: prætorum, ædilium, questorum, minorum etiam magistratuum numerum ampliavit: nudatos opere censorio, aut sententia judicum de ambitu condemnatos, restituit." Suet. in Cæsar. 41. 40 "Comitia cum populo partitus est; ut, exceptis consulatus competitoribus, de cætero numero candidatorum, pro parte dimidia, quos populos vellet, pronuntiarentur: pro parte altera, quos ipse edisset. Et edebat per libellos circumtribus missos scriptura brevi, Cæsar dictator illi tribui. Commendo vobis illum, et illum, ut vestro suffragio suam dignitatem teneant." Suet. in Cæsar. 41.

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III.

It must be confessed, that the light in which some writers have placed these facts rather lessens the merit of Cæsar's government; but a modern advocate of his honor thinks the whole a misrepresentation, no mention being found of them in the letters of Cicero⁴¹. This, indeed, amounts to no more than a negative reason; though it can hardly be imagined, that any gross abuses of this nature would have been overlooked by one, who, with all his servile adulation, and public professions of respect, never neglected any opportunity of exposing his faults in private, when he could do it without hazard to himself. It is most likely, therefore, that the mischiefs arising from these irregular exertions of power were, originally, of no great consequence; but were made use of afterwards by his enemies as a handle, among others, to justify their own conspiracy⁴²; and were then delivered down by themselves and their partizans, with several additional aggravations, till they found a place in future history.

Having no desire to conceal the failings of Julius Cæsar, or to suppress any exceptionable parts of his civil regulations, we may, with more confidence, advert to the remainder, which equally prove both the goodness of his heart and the solidity of his judgment. At the head of these should be remembered his very strict and indefatigable attention to the due administration of public justice⁴³, in rescuing it from the hands of those, by whom it had been much abused⁴⁴; and committing it to the senatorial and equestrian orders.

⁴¹ Hooke's Rom. Hist. 10. 2. p. 193.

⁴² This seems to be the idea of Suetonius himself, who speaks of several sarcasms thrown out against the new senators, in the following terms; "Peregrinis in senatum allectis libellus propositus est: *Bonum factum. Ne quis senatori novo curiam mon-*

strare velit: et illa vulgo caneantur:

"Gallos Cæsar in triumphum ducit,
"idem in curiam.

"Galli bracas deposuerunt, latum clavum sumpserunt."

Suet. in Cæf. 80.

⁴³ *Jus laboriosissime ac severissime dixit.*
Suet. in Cæf. 42.

⁴⁴ Τα δικάσματα τοῖς τε βουλευταῖς καὶ τοῖς ἱπποῖσι μόνον ἐπετρέψεν, ὅπως το καὶ ἀργότερον ὅτι· μάλα αἱ δικάσεις ἀριστεροὶ γὰρ καὶ ἐκ τοῦ ὄμιλου τινὲς συνδεδυγασκὸν αὐτοῖς. Dio Cass. 43. 25. "Jura ad duo genera judicium redegit, equestris ordinis ac senatorii: tribunos ærarios, quod erat tertium, sustulit." Suet. in Cæf. 41.

alone,

alone, from whose rank and education there was, at least, a chance of its being dispensed with greater knowledge and impartiality.

C H A P.
II.

To restrain the luxury and dissipation of the great and opulent, whose effeminate example threatened the utter extinction of that spirit of heroism, on which the future glory of Rome so much depended, he revived the antient sumptuary laws; enacted some new ones; and enforced the observance of them all, by keeping a watchful eye over their daily course of life⁴⁵. He forbade the use of sedan-chairs, of purple garments, and of jewels, except to persons of a particular age and station: he set guards upon the market, to prevent the sale of certain articles of intemperance; and carried his severity so far, as to command them to be taken away, even when already served up to the table⁴⁶.

Sumptuary
Laws.

To the voluptuous devotees of Epicurus, in which that age so plentifully abounded⁴⁷, such a mortifying disappointment of their pampered appetites, no doubt, appeared a most oppressive act of tyranny; and, had it ever been exercised in a state better acquainted with the true value of liberty, would have justly provoked the clamors of the most calm and dispassionate patriotism. As therefore it might give offence to the more refined ideas of modern times, to palliate so violent an invasion of domestic privacy, we must content ourselves with endeavouring to account for the reason of these laws,

⁴⁵ Τα ἀναλωματὰ τῶν τι ἐχούτων, ἐπὶ πλείστον ἐπ' ἀσέβειας ἐξηγγέμιναι, οὐκ ἐν τομῇ μόνον ἐμείρισται, ἀλλὰ καὶ τῇ ἐργῇ ἰσχυρῶς ἐν φυλακῇ ἐποιήσατο. Dio Cass. 43. 2.

⁴⁶ "Lecticarum usum, item conchyliarum vestis, et margaritarum, nisi certis personis et ætatibus, perque certos dies admittit. Legem præcipue sumptuariam exerceuit: dispositis circa macellum custodibus, qui opsonia contra vetitum retinebant, deportarentque ad se, submissis ponnunquam licioribus atque militibus,

" qui, si qua custodes fecellissent, jam appositæ sita e triclinio auferrent." Suet. in Cæs. 43.

⁴⁷ Such as we find them described by the ingenious satirist;

" Nos numerus fumus, et fruges confumere nati;

" Sponsi Penelopes, nebulones, Alcinoique,

" In cute curanda plus æquo operata juvenis."

Hor. Ep. 1. 2. 27, &c.

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III.

which had their origin in ages much earlier than Julius Cæsar; and were founded in principles peculiar to the Roman constitution, even in the meridian of her purest freedom.

The antient and plain republicans, destitute of those delicate and exquisite sensations which distinguished their politer posterity, were used to satisfy the ordinary demands of nature by such frugal repasts, as were most conformable to the simplicity of their manners, and the tenuity of their fortunes. Thus allowing less time to sensual indulgences, they had the more left for the works of enterprize; and by conquering their own irregular desires, were better enabled to subdue the world. A few acres, which, with his own manual labor, were sufficient to afford bread and pulse for the sustenance of his family, was an estate for a general, consul, or dictator. Even the famous C. Marius, who was seven times consul, having once distributed fourteen acres a-piece to his soldiers, and hearing that several of them were discontented with so scanty a portion, exclaimed, with an honest ardor, "Let no Roman think that too little, which is enough to supply him with the common necessaries of life ⁴³."

The many wonderful feats of arms wrought by the prowess of such hardy and penurious rustics gave a consequence to poverty, and made it the most honorable mark of distinction of every brave and virtuous Roman. To encourage, likewise, an universal spirit of frugality, and to keep all orders and degrees within the due bounds of their patrimonial fortunes, a brand of infamy had been set upon prodigality, by the primitive manners of the times, which afterwards found its way into the Twelve Tables, in the shape of a positive law. By this, if any person, though of full age, was seen idly spending his estate, and living beyond the compass of his annual income, he

⁴³ Επειρος (C. Marius) τωι κατ' ανδρα ημεας τας, Μυδιαι, εφη, γινωσκο 'Ρωμαίων ολιγην ηγυμναιος δακα και τισσαρα ωλιδα γης, εγω ωλιγοι επιζητην-την τροφην αρκουναι. Plut. in Craff. p. 250.

was considered in the light of an absolute lunatic; was taken before the prætor, put under the care of guardians, and deprived of the management of his own affairs, till he had recovered from the diseases of imprudence and profusion⁴⁹. While laboring under this legal disability, he was not permitted to make a will⁵⁰; all his obligations, alienations, and contracts were annulled (such only excepted, as were made to his own advantage⁵¹); for, according to the sentiments of these ages, it was a matter of public concern, that no one should make an ill use even of his own property⁵².

It was certainly no small honor to the policy of old Rome, that laws and manners could be made so compatible with each other; but

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II.

⁴⁹ Thus stands the law in the antique garb in which it was dressed by the "decemviri;" SI FURIOSUS AUT PRODIGUS EXISTAT, AST EI CUSTOS NEC ESCIT, AGNATORUM GENTILIUMQUE IN EO PECUNIÆVE EJUS POTESTAS ESTO. Tab. 5. in Grav. O. J. p. 288. The following account we likewise find in an ancient collection; "*Maribus per prætorem bonis interdicatur, hoc modo; QUANDO TUA BONA PATERNA AVITAE NEQUITIA TUA DISPERDIS, LIBEROSQUE TUOS AD EGESTATEM PERDUCIS, OB EAM REM TIBI EA RE COMMERCIOQUE INTERDICO.*" Jul. Pauli Recept. Sent. 3. 4. 7. Several subsequent determinations were founded upon the same law, which may be very deserving of attention, as they clearly point out the reasons whereon the Roman legislature thought proper to act in these extraordinary cases; thus, "D. Pius matris querelam de filiis prodigis admisit, ut curatorem accipiant, in hæc verba: *Non est novum quoddam, etsi memis sue videbuntur ex sermonibus compotes esse, tamen sic tractare bona ad se pertinentia, ut, nisi subveniatur his, deducantur in egestatem: eligendus itaque erit*

qui eos consilio regat: nam æquum est, præcipere nos etiam iis, qui, quod ad bona ipsorum pertinet, furiosum faciunt exitum." D. 26. 5. 12. 2. And again, "Lege Duodecem Tabularum prodigo interdicatur bonorum suorum administratio: quod moribus quidem ab initio introductum est. Sed solent hodie prætores vel præsides, si talem hominem invenerint, qui neque tempus neque finem expensarum habet, sed bona sua dilacerando et dissipando profudit, curatorem ei dare exemplo furiosi: et tam diu erunt ambo in curatione, quamdiu vel furiosus sanitatem, vel ille sanos mores receperit: quod si evenerit, ipso jure desinunt esse in potestate curatorum." D. 27. 10. 1 pr.

⁵⁰ "*Prodigus, cui bonorum suorum administratio interdicta est, testamentum facere non potest.*" I. 2. 12. 2.

⁵¹ "*Is cui bonis interdictum est, stipulando sibi acquirit: tradere vero non potest, vel promittendo obligari: et ideo nec fidejussor pro eo intervenire poterit, sicut nec pro furioso.*" D. 45. 1. 6.

⁵² "*Expedit reipublicæ, ne sua re quis male utatur.*" I. 1. 8. 2.

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III.

it soon became impossible to preserve their spirit, when the foundations once approached towards a state of decay. The appetite for sensual enjoyments naturally increased with dominion and riches³³: gluttony advanced with rapid steps, and, upon public holidays especially, seems to have been indulged with a degree of excess, very unbecoming the solemnity of those sacred occasions. From such causes arose those *sumptuary laws*³⁴, so plausible in theory, however difficult to be reduced to practice.

A. U. C.
571.

The first of these was the *Orcian Law*, to limit the charge of entertainments, and the number of guests; about twenty years after which the senate passed a decree, to oblige the chief persons

A. U. C.
592.

of the city, by a formal oath, not to expend more than a certain sum in the Megalensian Games. Upon this was immediately founded the *Fannian Law*, so called from C. Fannius Strabo, then consul, which extended the prohibition to various other festivals³⁵. The

A. U. C.
610.

operation of this however being limited only to the walls of Rome, the *Didian Law* was made, to include all Italy under the same

A. U. C.
657.

restrictions; and to inflict penalties, not only upon the master of the entertainment, but likewise upon all that were present. In due course of time followed the *Licinian Law*, enacted by the consul P. Licinius

³³ Thus says the glutton, in excuse for his own intemperance;

“Ego vectigalia magna,
“Divitiasque habeo tribus amplas regi-
“bus.” Hor. Sat. 2. 2. 100.

³⁴ Ros. Ant. Rom. 8. 13.

³⁵ The following account of the origin of these laws is to be found in a celebrated antiquarian; “Legi adeo nuper in Capitonis
“Atei conjectantibus senatus decretum vetus
“C. Fannio et M. Valerio Messala Coss.
“factum; in quo jubentur principes civi-
“tatis, qui Ludis Megalensibus antiquo ritu
“mutuarent, id est, mutua inter sese con-

“vivia agitarent, jurare apud consules, ver-
“bis conceptis, non amplius in singulas coe-
“nas sumptus esse facturos, quam centenos
“vicenosque æris, præter olus et far et
“vinum; neque vino alienigeno sed patrio
“ufuros; neque argenti in convivio plus
“pondo, quam libras centum illaturos.
“Sed post id senatusconsultum Lex Fannia
“lata est, quæ ludis Romanis, item ludis
“plebeis et saturnalibus, et aliis quibusdam
“diebus, in singulos dies centenos æris in-
“sumi concessit, decemque aliis diebus in
“singulis mensibus tricenos; cæteris autem
“diebus denos.” Aul. Gell. 2. 24.

Craſſus, which granted ſeveral extraordinary indulgences upon nuptials, and certain other feaſts, but enjoined the uſe of ſalted or dried fleſh, and ſuch like coarſe fare, upon common days; though allowing, at all times, a promiſcuous and indefinite enjoyment of fruits, and other vegetable productions of the earth⁵⁶.

C H A P.
II.

Such were the very ſingular and curious provisions of the Roman legiſlature, to ſtop the current of luxury, and diſcourage extravagance. Every oſtentatious expence, beyond the ordinary bounds of domeſtic œconomy, was conſidered as deſtructive of the true national character, and puniſhed with different degrees of rigor, as far even as degradation from that rank which the offender bore in the ſtate. Thus Rufinus, an anceſtor of Sylla, and a perſon of conſular dignity, was expelled the ſenate, for having in his houſe a larger quantity of wrought plate than was allowed by law; a puniſhment that reduced his deſcendents to obſcurity for ſeveral generations. Sylla, therefore, returning from his African expedition, in all the pride of victory, was reproached by an honeſt and primitive Roman, for ſuch a vain-glorious diſplay of wealth, as was wholly inconſiſtent with his native indigence. For though the national innocence and ſimplicity had been long upon the decline, it was ſtill eſteemed not leſs.

⁵⁵ Thus, ſays the ſame author; “Lex
“ deinde Licinia rogata eſt; quæ cum certis
“ diebus, ſicuti Fannia, centenos æris im-
“ pendi permiſiſſet, nuptiis ducenos indul-
“ ſit; cæteriſque diebus ſtatuit æris trice-
“ nos; cum et carnis aridæ et ſalfamenti
“ certa pondera in ſingulos dies conſtituerit:
“ ſi quicquam eſſet natum e terra, vite, ar-
“ bore; promiſcue atque indefinite largita
“ eſt.” Id. ib. It is ſubmitted to the judg-
ment of the claſſical reader, whether the
foregoing laws may not throw ſome addi-
tional beauty upon the character of the honeſt
Ofellus; whom we find ſolacing himſelf

with the conſideration, that he had never,
daringly and wilfully, deviated from that ſtyle
of life preſcribed by the eſtabliſhed rules of
the conſtitution; but had always conformed
to the precepts of the Licinian Law;

“ Non ego, narrantem, temere edi, luce
“ profeſta,

“ Quidquam præter olus, fumoſæ cum pede
“ perne;”

regaling himſelf, however, as occaſion ſerved,
with a deſert out of his own garden;

“ Tum penſilis uva ſecundas,

“ Et nux ornabat menſas, cum duplice
“ ſicu.” Hor. Sat. 2. 2. 116, &c.

infamous.

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infamous to depart from a state of hereditary poverty, than to squander an hereditary fortune⁵⁷.

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It is not improbable that the severity of this rebuke produced its full effect upon the mind of the dictator, and suggested to him the expediency of enacting another law, to revive, and give new force to, the preceeding; which, though of so very recent a date, were already antiquated, and overwhelmed in the corruptions of an abandoned age⁵⁸. This was succeeded by some others of less note and consequence, long after the introduction of the imperial government; till the emperors, being degenerated into monsters of voluptuousness and brutality, were no longer solicitous to check the growth of a vice, of which themselves were the most egregious examples.

Laws of this kind, thus immediately levelled against the ruling passions of a profligate world, though strongly revolting against the notions of British liberty, are very proper and useful objects of our political speculations; we have therefore paid them a more particular attention on this occasion, not only as they exhibit a striking picture of the character of those times; but likewise as they suffi-

⁵⁷ Τῶν δὲ προγοιῶν αὐτῆς λεγοῦσι· Ῥοῦβιοι ὑπα-
νοῦσαι· καὶ τούτῳ δὲ τῆς τιμῆς ἐπιφανεστέρῳ γινέσ-
θαι τῆς αἰτίας. ἰσχυρὰ γὰρ ἀργυρίῳ κοίλῃ κενή-
ρῃος ὑπὲρ δακτύλων, τὴν νόμῳ μὴ δίδωσι· ἐπὶ
τούτῳ δὲ τῆς βουλῆς ἐξέπεσον. οἱ δὲ μετ' ἐκείνου ἤδη
ταπεινὰ πρᾶξις διέτιλιν· αὐτοὶ τὴν Συλλᾶς ἐκ
ἀφροσύνης ἐστράφη τοῖς πατρίοις. γενομένης δὲ μετὰ αὐτοῦ,
ὅπου παρ' ἑτέροις, ποικίλῃ καὶ πολλῇ τιμῇ, ὡς ἑτέροις
ἀποδίδωσι, παρ' αὐτοῦ εὐτυχίᾳ δοκῶν. σιμωνομεικῶν
μὲν γὰρ αὐτῶν, καὶ μεγαληγορίας μετὰ τῇ ἐν Λιβύῃ
στρατείᾳ, λεγόμεναι τὴν ἐκείνῃ τῶν καλῶν τε καὶ ἀγαθῶν
αἰτίας, καὶ πῶς αὐτοῖς οὐ χρῆτος, ὅς, τὴν πατρὸς σοὶ
μὲν ἐγκαταλειπόμενος, τὰς αὐτῶν κληῖδας; καὶ γὰρ ἐκ
ἐξ τῶν βίων ἐν ἡδίστοις ὀρδοῖς καὶ καθαροῖς μενοῖται,
ἀλλ' ἐγκαταλείπων καὶ παραδιδόμενος τρυφῆς καὶ
πολυτελείας ζῆλοι. ἐκ γὰρ ὁμοῦ οὐκ οὐκ ἐπιδότω τῆς

ὑπαρχούσας εὐκλείας ἀπολεσάσας, καὶ τῆς πινῆς
πατρὸς μὴ διατελέσας. Plut. in Syl. p. 44.

⁵⁸ The words of the Latin historian are extremely remarkable; "Postea L. Sylla
"dictator, cum legibus istis situ atque senio
"obliteratis plerique in patrimoniis amplius
"bellarentur, et familiam pecuniamque
"suam prandiorum gurgitibus proluisent,
"legem ad populum tulit, qua cautum est,
"ut kalendis, idibus, nonisque, diebus lu-
"dorum, et feriis quibusdam solemnibus
"sestertios tricenos in canam infumere jus
"potestasque esset; ceteris autem aliis die-
"bus non amplius ternos." Aul. Gell. s.
24.

ciently

iently vindicate the conduct of this discerning politician, for his strictness in the execution of them. C H A P.
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The age of Cæsar was not the age of abstemiousness and mortification; for it would be difficult to say, whether the other nations of the earth were greater slaves to the Roman power, than the Romans were to their own pleasures. The emperor himself was not wholly exempt from many of the same blemishes; though they had not so far subdued the nobleness of his nature, as to prevent him from foreseeing the fatal consequences of them to the commonwealth. Upon this ground we may fairly account for his solicitude to obviate those evils which portended its immediate ruin. As Rome owed the whole of her glory and good fortune to the strength of her arms, upon that only could she depend for her future existence. Being at no time a commercial nation, she was without those resources which lie in the manual labor of the inhabitants; and which keep the spirit of industry in perpetual action, at the same time that they plentifully supply the demands of luxury. The neighbouring country did not even afford a sufficiency of corn for the daily consumption; so that the poor would often have been in danger of starving in the midst of their triumphs, had they not been maintained either by the generosity of rich individuals, or of the government itself. A debauched and effeminate course of life, as it diverted the stream of charity, as it debased the mind, and enervated the body, was, of all others, the most repugnant to the genius of a military people. Times like these required a vigorous exertion of the executive power. The conduct, therefore, of Cæsar was fully justified, as well by the laws then in being, as by the critical exigencies of the age; and affords the strongest presumptive proof, that he was actuated by a sincere and earnest zeal for the true interest and honor of his country.

Luxury, even in a commercial state, is no longer tolerable, than while it preserves the just balance between industry and riches. But

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when it once exceeds the due bounds of private oeconomy; when prodigality becomes fashionable, and to be immersed in debt, is esteemed a criterion of politeness; then begin the ruin and misery of those noble and respectable families, whose generous and independent spirit is the surest support of a free constitution. The wealth of the nation then flows in a new channel: is engrossed into the hands of knaves and usurers, a swarm of pestilential vermin, generated from the sink of avarice, extortion, and infamy; who, without blood, virtue, or education, succeed, in all the pride of their native ignorance and vulgarity, to the estates of their superiors; in the lowest servility of imitation adopting their corrupt manners, and gradually diffusing the same infection through every order of the people; till, lost to all hopes of retrieving their exhausted fortunes, they grow negligent or desperate; and either fall an easy prey to their foreign enemies, or become slaves to their domestic tyrants.

Such was the abject state of this queen of nations in these memorable ages⁵⁹: and happy would it have been, had the fate of such a vast and once flourishing empire, thus brought to decay by vice and profusion, operated as a warning to succeeding generations. The supreme ruler, therefore, who by his authority, and much more by his example, endeavours to confine his subjects within the reasonable limits of their own fortunes; who encourages frugality without covetousness, and industry without penury; contributes more to the glory of his own reign, and to the solid happiness of his country, than by adding dominion to dominion, and making every quarter of the globe tremble with the echo of his name.

Though a professed enemy to domestic luxury, the ideas of Cæsar were always full of expence and magnificence, whenever they could

⁵⁹ Thus we find it described by Plutarch; και ταπεινους σονερόντας ανδρας· ως μικρας Επιφαλαςα δ' η' Ρωμη προς μεταβολην ειχε δια βοης δισθαι τα τραγαμαλα, και σωθης ιναι τα πολ- την εν ταις βασεις ανωμαλια, των μιν εν δ' εξη μαλιστα μισαλδς εκσθαι την πολιτειαν, αυτην υφ' αυτης και φρονημα καταπλωχουμενων εις θ.α.ρα και δειπνα και ρουσσαν. In Cic. p. 451.
φιλογχιας και οικοδομιας, των δε πλετων εις αγεινις

promote the honor of the public. Well apprised, therefore, of the numerous advantages of external grandeur in the principal seat of empire, and how powerfully show and splendor strike the minds, and impose upon the imaginations, of strangers; he liberally bestowed his wealth in improving and decorating the city of Rome, so as to make it an object both of curiosity and veneration, to all dependent or foreign nations. Neither was he less assiduous in extending his dominions, and securing their tranquillity⁶⁰. To these munificent and ornamental virtues of the prince, he added the polite and attractive accomplishments of the gentleman and the scholar; among which ought ever to be remembered, with universal gratitude, his reformation of the kalendar; a solid and lasting specimen of his good sense and penetration, that has deservedly given him one of the foremost seats upon the bench of philosophy, and will continue a public benefit to the world to the latest posterity⁶¹.

A regular series of political improvements, pursued with such warmth and perseverance, is not to be ascribed to the sudden sallies of pomp and ostentation, as if designed for no better purpose, than to disguise ambition, and palliate despotism; but has a perfect right to be considered as the deliberate result of a long and mature reflexion; as the suggestion of an ardent and patriotic compassion for the deplorable state of his declining country. So careful likewise was Cæsar in every thing that concerned the public welfare, that he formed no resolution of consequence without first asking the advice of the senate; and therefore, though several of his laws

⁶⁰ “ Jam de ornandâ instruendâque urbe, “ item de tuendo ampliandoque imperio, “ plura ac majora in dies destinabat.” Suet. in Cæf. 44. Many of the particulars are enumerated by Plut. in Cæf. p. 160 & 161; and likewise by Dio Cass. 43. 22. who, as if tired with a long and special detail, concludes with saying, Ὡς ἴσιν τινος ἀριθμοῦ γράψαι ἐδύνατο ἔχλον αὐτῆς συγγραφῆς, οὐδ’ ἀληθῶς ἴσιν.

παράσχει. πάντα γὰρ τὰ τοιαῦτα ἐπὶ το μίξῃ αἰ, κομπουται. τούτο μὲν οὐ καὶ ἐπὶ τῶν ἄλλων τῶν ὁμοίων τῶν ἐπιπῶ γενόμενῃ εἰσώ, πληρὴ ἐἰ μὴ τι πᾶν μοι δοξῆται ἀναγκαῖον εἰπεῖν εἶναι.

⁶¹ Ἡ δὲ τῆς ἡμερολογίου διαθεσις, καὶ διορθωσις, τῆς περὶ τὸν χρόνον ἀνωμαλίας, φιλοσοφηθεῖσα χαρίτως ὑπ’ αὐτοῦ, καὶ τέλος λαβύσα, γλαφυρωτάτην πειρασχὴν χρεῖαν. Plut. in Cæf. p. 161. Suet. in Cæf. 40. Dio Cass. 43. 26.

carry upon the face of them a tincture of severity, they were amply justified by every sanction, that the concurrence of so venerable an assembly could possibly give them ⁶².

The liberality of Cæsar's mind was in nothing more conspicuous than in the gentleness of his carriage to all persons of distinguished merit, without respect of party. Sensible of the many benefits to be derived from their abilities and advice, he spared no pains to overcome their prejudices, and by every instance of condescension to give them favorable ideas of his administration. But the most signal instances of his friendship were shewn to Cicero; who, though irreconcilable in secret, being flattered by the advances of so great a man, paid him every mark of respect in public, and affected to be convinced of the sincerity of his intention to restore the constitution ⁶³. He even went so far as to draw up a plan for the resettlement of the government, but soon suppressed it without publication, out of deference to the criticisms of his too scrupulous friends ⁶⁴.

It must be confessed, that the traces of this design are rather obscure, and only to be collected from slight and distant hints, thrown out in his epistles to his most intimate correspondents; therefore a more exact account of them cannot now be expected. We have only to lament the loss of any production of so able a statesman upon such an interesting subject ⁶⁵.

⁶² Και ταυτα μιντοι, τα τε αλλα οσα υπερ του κοινου εβουλιετο, ουτ' ιδιογυμων ουτ' ιδιοβουλων επρατειν, αλλα παντα δη παντως τοις πρωτοις της βουλης, εις δ' οτι και παση αυτη, επικοινου. Και παρα τωτο ουχ ημισα, καιτοι τραχυτερον τινα νομοθετησας, ομως ηρεσε σφισι και επι μιν τετοις και επανον ελαμβανεν. Dio Cass. 43. 27.

⁶³ Thus, in his letter to Servilius Isauricus, he observes; "Sperare videor, Cæsari, collegæ nostro, fore curæ, et esse, ut habeamus aliquam rempublicam, cujus consiliis magni referebat te interesse." Ep. Fam. 13. 68.

⁶⁴ To this he is supposed to allude in an epistle to his friend Atticus; "Epistolam ad

Cæsarem mitti video tibi placere. Quid quæris? mihi quoque hoc idem maxime placuit, et eo magis, quod nihil est in ea nisi optimi civis; sed ita optimi, ut tem-pora, quibus parere omnes politici præcipiunt. Sed scis ita nobis esse visum, ut isti ante légerent. Tu igitur id curabis. Sed, nisi plane iis intelliges placere, mittenda non est. Id autem utrum illi sentiant, anne simulent, tu intelliges. Mihi simulatío pro repudiatione fuerit." Cic. ad Att. 12. 51.

⁶⁵ The reader will find some further observations upon it in Middleton's Life of Cicero, § 8. and Hooke's Rom. Hist. 10. 10.

This loss, however, is in some degree compensated by other highly valuable remains of Sallust; a writer not less celebrated for his political than his historical abilities, who had borne the high office of prætor⁶⁶, and for several years had lived upon a footing of the greatest confidence with Cæsar himself. These treasures are contained in two epistles, in which he enters deeply and sensibly into the various causes of the public calamities, and proposes many reasonable and liberal regulations, to rectify the disorders in which the state was involved⁶⁷.

To deliver this diseased and debilitated constitution from the complicated miseries under which it then lay expiring, certainly required no small effort of power; but such a power, as was far from incompatible with the rights of nature and civil liberty. While Cæsar's mind was occupied by these truly noble and beneficent designs, his enemies, who shrunk from the lustre of his superior abilities, were indefatigable in their endeavours to set him in the most odious point of view in the eyes of the people, by irritating their passions with a report, that he affected the long-proscribed and detested title of King⁶⁸. Well knowing the magic influence of inveterate prejudices, they flattered themselves, that the very suggestion of such an attempt would be an ample justification of their

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⁶⁶ Dio Cass. 42. 52.

⁶⁷ These are generally called Orations; though from the free and confidential style in which they are written, and particularly from what the author says of them himself, they should more properly be named Epistles. "Forſitan, imperator *perleſſis litteris* defideres," &c. Ep. I. We now find them translated, or rather paraphraſed, by Mr. Hooke, with ſeveral uſeful notes and obſervations. Rom. Hiſt. vol. 4. p. 227, & ſeq. They are extremely precious relics of antiquity, but being always printed among the fragments of that author, have been long

overlooked; and are not yet ſo well known as they deſerve, by all curious ſearchers after hiſtorical anecdotes.

⁶⁸ Το δε εμφανες μαλιστα μισος και θανατηφόρον επ' αυτους ο της βασιλειας εως εξεργασατο, τοις μω πολλοις αιτια περὶ η, τοις δε υπυλοις παλαι, προφασις ευπρεπιστατη γινομενη. Plut in Cæs. p. 162. Εβουδα ουκ αυτου οβλος, ουδεν επι ενδοιασμος δι επιβουλευοντες δι επραττειν· αλλ' οπωρ δη και τοις παιν φιλοις εν μισοι γινηται, αλλα τι επι διαβολη αυτου ποιοιεν, και τιλος βασιλευα αυτοι προσηγομενοι, και πολυ τουτο τουτομα και παλα σφας διεθρυνοντο. Dio Cass. 44. 9.

own baseness and ingratitude; and instead of branding them with the odious appellations of traitors and assassins, would exalt them to the dignity of heroes and patriots⁶⁹.

The want of authentic records, concerning some very important transactions of this interesting period, is a misfortune that can never be too much lamented. The two celebrated instances, upon which the charge of Cæsar's aspiring to the royal diadem was founded, were accompanied, even then, with so many obscure and ambiguous circumstances, that it may fairly be questioned whether they were, at any time, properly understood; and, of course, gave greater scope to his adversaries to misapply them, in whatever manner was most likely to promote the success of their own machinations. The generality of historians of the two centuries immediately succeeding (as a learned countryman of our own has very judiciously observed⁷⁰) "evidently took their accounts from Pompeian memoirs," from writers who had an apparent interest in vilifying his memory; while, on the other side, his friends were either totally silent in his defence, or the envious hand of time has deprived us of their testimony. Thus the merciless tongue of malice had effectually silenced the sober voice of truth; and prostituted the sacred and adorable name of liberty, to the basest and most rancorous purposes of opposition, faction, and murder.

By length of time the stain is become almost indelible; and yet, the same facts which have generally been adduced in support of the accusation, may as fairly be used to maintain the direct reverse of that conclusion. Cæsar had too great a soul to be a hypocrite: what he

⁶⁹ The malice of the conspirators is thus beautifully described by the Greek historian; Οἱ γὰρ δι' τὴν αὐτοκτονίαν, φθόρον τε τοῦ προσηκούσης, καὶ μίσους τοῦ πρόβλημματος σφῶν, προσπίπτειν, ἐκείνους τε ἀνομιᾷ ἀπικλίνειν, καὶ τοῦ ἀνοσιού δοξῆς ὄνομα πρόσ- λαβόντες, καὶ τὰ ψηφισθῆναι δισκεῖν τὰς τῶν αὐτῶν ἐξ ὁμοιοῦς, καὶ πολιτικῶν ἐμφυλίου τοῖς Ῥω-

μαίοις παρισκευασιν. εἰς γὰρ μὴν γὰρ, καθαιρεται τὴν τοῦ Καίσαρος καὶ ἐλευθερίας τοῦ δήμου γέγοναι· τοὶ δ' ἀλλήλοις, ἐκείνους τε ἀσέβως ἐπιδιόλυσαν, καὶ τὴν πόλιν οὐδὲν ἢ πολιτευομένην ἐτασίασαν. Dio Cass. 44. 1.

⁷⁰ Hooke's Rom. Hist. vol. 4. p. 24.

would

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71 Οὐ μὲν ἄλλα καὶ πρὸς τὴν τύχην τῶ ἀνδρὸς
(sc. Cæsaris) ἐγκυκλιούσης, καὶ διδύμῳ τοῦ χα-
λίου, καὶ τῷ ἐμφύλιῳ πολέμῳ καὶ κακῇ αἰσχροῦ
ἡγήσαντι τῇ μοναρχίᾳ, δικαίως μὲν αὐτοὺς ἀπειδι-
ξαι δια βίη. τοῦτο δὲ ἡ ὁμολογούμενη μὲν τυραννίς, τῷ
ἀντικειμένῳ τῇς μοναρχίᾳ, τῷ ἀκαταπαύστῳ προσλα-
βουσιν. Plut. in Cæs. p. 159.

⁷² The Greek historian has left us the following observations; Ου γὰρ δὴ καὶ ἀνὰ τὸν πᾶν τὸ ἐπιφθόνον ἐκίχησάν, πᾶν καὶ ὅσον αἱνοῖ οἱ βουλευταὶ τὰς τε κακοτυχίας καὶ τὰς; ὑπερβολὰς τῶν τιμῶν ἐξαπαλῆς τε αὐτὸν καὶ φουσπαλλῶν, ἀπείλει ἐπ' αὐτὰς ἐκείνας καὶ ἐμμερόφθοι καὶ διεσπάλιν.

ὡς ἡδεως τε σφας λαμβανουσα, και ογκυροτερος απ' αυτων ζωηα. εστι μας γαρ οτι και ο Κωισαε ημαρι, διζαματος τε τινα των ψηφισθηνον οι, και πισυσας ολιγς αυτων αειουσθαι· πλειον δε ομοος κειται, οι τιτες αρξαιμενοι τιμαν αυτοις ως και αξιοι, προηγαγοι ες αυταις, ως εψηφισθησθαι. τον γαρ διωθεισθαι παλαια αυτα ετολμα, μη και υπερβροντοι μορισθην· ουτ' αυ, λαμ' βανον, ασφαλως εναι ηνυσθη. Dio Cass. 44. 3.

73 Thus, among the other honors then offered, are mentioned, "Ad hæc pater ipse patriæ Perpetuusque Dictator, *dubium an ipse uolens*, oblata pro rostris ab Antonio consule regni insignia." Flor. 3. 2.

his

his authority, that his greatest adversaries hesitated, whether they should venture to stigmatise it with the name of tyranny⁷⁴.

But supposing, for a moment, that Cæsar, with a mind full of these beneficent intentions, had, in fact, expressed a desire to gratify his vanity with the outward splendor of majesty; I shall, even then, make no scruple of asserting, that, how tremendously soever the word Monarch may chance to sound in the ears of fastidious republicans, there is no such natural malignity in a crown, as must of necessity transform every wearer of it into a tyrant, or degrade every man into a monster.

Some excuse indeed may be made for him, upon the natural principle of self-preservation. He had raised himself, by the superiority of his arms, to the highest pinnacle of earthly grandeur, and had now no other alternative left, but to be either Cæsar or Nothing. It was incumbent upon him, either to shelter himself within the fortress of sovereign authority for the remainder of his days, or fall at once from that lofty precipice into certain contempt and perdition. He had sufficient warning of these consequences from the licentious clamors of the soldiers after his triumph; who openly provoked him either to resign his power, and submit to the public censure; or to retain it, and live in security⁷⁵. He bore the rebuke like a philosopher⁷⁶; but prudently chose that alternative, which many a more scrupulous man would probably have done under the like circumstances⁷⁷.

But,

⁷⁴ Ἡ Καισαρος ἀρχὴ συνταγμένη μὴν οὐκ ὀλίγα τοῖς ἐπαλιουμένοις πραγμάτοις παρῆσχεν. διξάμενοις δὲ καὶ κρατῆδυσιν ὄνομα καὶ δοκτοῖς ἐφανή μιν, ἔργον δ' ἀπ' αὐτῆς ἡδὲν ὥμοι ἢ δὲ τυραννικοὶ ὑπερξέν. Plut. in Paral. inter Dion. & Brut. p. 273.

⁷⁵ Ἄν μιν καλῶς ποιήσῃ, κολασθῇ, ἢ δὲ κακῶς, βασιλευσικῶς. Τὸτο δὲ αὐτοῖς ἐβλεπετο δηλοῦν, ὅτι ἂν μιν ἀποδῇ τῇ δυνάμει τὴν αὐτονομίαν (ἵπτερ ποὺ δικαίον νομίζον ἵπται) καὶ κριθῇται ἐφ' οὗς ἐξω

τῶν νόμων ἐξουσιασάτο, καὶ δικῇ ὑφίξει· ἂν δὲ τῇ δυνάμει ἐμμένῃ (ὅπερ τοῦ ἀδικουμένου ἔργον ἢ) μοναρχήσῃ. Dio. Cass. 43. 20.

⁷⁶ Οὐ μόντοι ἐκείνους ἔχοντο ταῦτα αὐτῶν λεγόντων, ἀλλὰ καὶ πάντες ἔχοντες, ὅτι τὸσαυτὴ πρὸς αὐτῶν παρρησία. Πότερ τι μὴ ἂν ἐργισθῆται ποτε ἐπ' αὐτῇ. Ἰδ. ib.

⁷⁷ Whatever may be wanting to complete the justification of Cæsar's conduct upon this trying

But, in truth, the state was now advanced to the highest paroxysm of its frenzy; and some potent medicine was immediately necessary to restore it to its former sanity. While the balance of contention remained so exactly poised between the opposite factions; while there existed so many equal pretenders to the sovereign power; it was in vain to expect any settled plan of government at all. The only forlorn hope of this divided nation now depended upon that perilous crisis, when one more fortunate warrior should effectually subdue all the rest of his rivals; should be in a condition to oblige them to yield to his superior good fortune, and to bring them all within the pale of his own dominion.

That crisis was now arrived. Many indeed were bold enough to affirm, that the distracted state of the commonwealth was incurable without such a revolution; and had before fixed their eyes upon Pompey, as one who was likely to govern with a gentler sway; and who, with an affected humility, declined the compliment, though he was then privately exerting his utmost efforts to be declared perpetual dictator. But, whoever was singled out by the choice of the respective parties, the wisest and most temperate of both wished that it might end in nothing worse than monarchy⁷⁵. Pompey himself, after the battle of Pharsalia, in a con-

trying occasion, the reader will find amply supplied in a late very able and ingenious defence of it by Mr. Hooke. Rom. Hist. 10. 11.

⁷⁵ The corrupt state of these times is thus described by Plutarch, in the following emphatical terms; Λαμβάνει προφασίς (sc. Cæsar) τὰς μὲν αὐτῷ Πομπηίου, τὰς δὲ τῶν παλαιῶν ἐκδοτῶν, καὶ τὰς τῷ Ῥώμῃ κακοπολιτικῇ, δι' ἣν δὲ μὲν ἀρχαὶ μετιόντις, ἢ μὲν διμνοὶ τραπέζας, ἰδεαζοὶν ἀναισχυντῶς τὰ πλεῖστα, καὶ τῇ δὲ ὁ δῆμος ἰμμεσδός, ἢ ψῆφους ὑπὲρ τῷ δώδεκοτος, ἀλλὰ τοῖς καὶ ξιφισ-

καὶ σφιδναῖς ἀμύλλοις, αἵματι δὲ καὶ περὶ πολλὰς αἰσχυνταῖς τὸ βῆμα διεκρίδεται, ἢ ἀναρχίᾳ τῆς πόλεως, ὥστε ἀκυβερνῆται ὑποφειρομένη ἀπολιποῦς· οἷς τὰς μὲν ἐχούσας ἀγνοοῦν ἢ πρὸς μηδὲν αὐτοῖς χεῖροι ἀλλὰ μοναρχίᾳ ἐκ τοιαύτης παραφροσύνης καὶ τούτου κλυδωνοῦ ἐκπεσύνται τὰ πραγμάτων. πολλοὶ δὲ πᾶσαν ὅτι καὶ λέγουσιν ἢ μισθὸν τολμῶντες πλεῖστα, πλεῖστον ὑπὸ μοναρχίας ἀνηκεῖται εἶναι τὴν πολιτείαν, καὶ τὸ φάρμακον τούτου χρεῖναι τὴν πρῶτα τῶν ἰατρῶν ἀσασχισθῆναι προσφεροῦς· ὑποδιδάσκοντες τοὺς Πομπηίους. Plut. in Cæf. p. 131.

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ference with the philosopher Cratippus at Mitylene, insisted upon the necessity of committing the government to the hands of a single person, on account of the perverse use that had long been made of republican liberty⁷⁹.

In conformity to the same idea, a very discerning writer, who was far from being partial to the Cæſarean cause, has declared his opinion, that "however flattering a popular government may appear in the eyes of the visionary advocates of natural equality, it has been found, by repeated experience, to contain no properties really correspondent to its name. Monarchy, on the contrary, terrible as it may be to the ear, is not without its advantages to civil society. That, as real virtue comes to the share of but few, it is less difficult to find it in one, than in a multitude: and even at worst, should an empire fall into the hands of a single tyrant, he is still preferable to a number who are equally bad; of which truths every nation of the world has afforded very plentiful examples⁸⁰."

Had therefore a monarchical establishment then taken place, by the free and universal consent of the people, it might have been productive of many very salutary consequences. A new system of this kind, equally remote from the extremes of regal despotism and republican licentiousness; amicably introduced; guarded by wise laws, and erected upon a solid and well-prepared foundation; might have appeased the tumults of contending factions, and have restored

⁷⁹ Τον δὲ (sc. Περικλῆα) ἀποφανεῖσθαι ὅτι τοὺς πραγματικῶν ἢ δὴ μοναρχίας εἶναι διὰ τῆς κακοπολιτείας. Plut. in Pomp. p. 507.

⁸⁰ Δημοκρατία γὰρ ὄνομα εὐχρησμον ἔχει, καὶ τινὰ ἰσομοιρίαν πασὶν ἐκ τῆς ἰσονομίας φέρει δοκεῖ, ἐν δὲ δὴ τοῖς ἐργοῖς ἐλεγχθῆναι μὴδὲν ὁμολογεῖται τῇ προσημασίᾳ καὶ τούτων ἢ μοναρχία, δυσχερὲς μὲν ἀκούσθαι, χρησιμωτάτην δὲ ἐμπολιτευσθῆναι, ἐστὶν

ἔστιν τι γὰρ ἵνα τινὰ χρηστὸν ἢ πολλοὺς εὖρην. αὐτοὶ καὶ τοῦτο χαλεποὶ τισὶν εἶναι δοκεῖ, πᾶσα ἀνάγκη ἐκείνῳ ὅτι ἀδύνατον ὁμολογῆσθαι εἶναι. οὐ γὰρ προσημασίᾳ καὶ τοῖς πολλοῖς ἀρίστην κτασθῆναι. ἐν δ' οὖν καὶ φαυλὸς τις αὐταρχήσῃ, ἀλλὰ τοῦ γὰρ πολλοῦ τῶν ὁμοίων ἀριστερὸς ἐστὶν ὥσπερ πρὸς καὶ τὰ ἔργα καὶ τὰ τῶν Ἑλλήνων καὶ τὰ τῶν βαρβάρων, τῶν τε Ῥωμαίων αὐτῶν, τιμητικοί. Dio Cass. 44. 2.

to the people as large a proportion of their antient liberties, as they were capable of applying to a proper use.

But whatever schemes of policy might have been in his further meditation, they were at once rendered abortive by that fatal stroke, which deprived the Roman world of its brightest ornament; and while it left his admirers to lament the loss of those benefits, which a just sense of the goodness of his heart encouraged them to expect, it gave equal room to the malevolence of his detractors to question the sincerity of his intentions, because he was thus unfortunately prevented from bringing them to maturity.

This melancholy event may serve likewise as a signal instance, how easily pride and revenge can assume the mask of virtue and patriotism. All the conspirators, one alone excepted, hated Cæsar, not the tyrant³¹; but in Brutus, while we condemn the assassin, we must venerate the man. A pure and virtuous character, thus unhappily suspended between two irreconcilable obligations; and summoned, as he thought, by a public duty to his country, to strike a blow, against which a sense of private gratitude as loudly exclaimed; is surely a worthy object both of our esteem and compassion. How terrible must have been the struggles of so noble and generous a mind, on the affectionate rebuke which fell from the faltering tongue of his expiring benefactor; and probably drew more blood from the heart of the involuntary murderer, than his own hand had drawn from the body of this illustrious victim!

From a mistaken emulation of the glory of his famous ancestor, he too easily forgot the distinction between Tarquin and Cæsar, between the destroyer and the father of Rome. With ideas well suited to the

³¹ Κασσιος, αὐτὸς θυμοειδής, καὶ πολλοὶ ἰδίᾳ προαχθῆναι τὴν λαμπρότητα καὶ τὴν φαινομένην καλὴν τῆς μισοκρατίας ἢ ποτὴ μισοτυραντίας. Plut. in Brut. πρᾶξις, τὴς δ' ἄλλης ἐπὶ τοῦ ἀνδρὸς συζητῆται μισοκρατίας καὶ φθονίας. Id. ib. p. 245.
 31 Κασιος, αὐτὸς θυμοειδής, καὶ πολλοὶ ἰδίᾳ προαχθῆναι τὴν λαμπρότητα καὶ τὴν φαινομένην καλὴν τῆς μισοκρατίας ἢ ποτὴ μισοτυραντίας. Plut. in Brut. πρᾶξις, τὴς δ' ἄλλης ἐπὶ τοῦ ἀνδρὸς συζητῆται μισοκρατίας καὶ φθονίας. Id. ib. p. 245.
 31 Κασιος, αὐτὸς θυμοειδής, καὶ πολλοὶ ἰδίᾳ προαχθῆναι τὴν λαμπρότητα καὶ τὴν φαινομένην καλὴν τῆς μισοκρατίας ἢ ποτὴ μισοτυραντίας. Plut. in Brut. πρᾶξις, τὴς δ' ἄλλης ἐπὶ τοῦ ἀνδρὸς συζητῆται μισοκρατίας καὶ φθονίας. Id. ib. p. 245.

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state of a small and infant republic, he little thought how impracticable it was for a boundless and potent empire to submit to the plain and contracted principles of the antient constitution; and that, when the simplicity and moderation of the primitive manners were once lost in the immensity of dominion, concord and unanimity would no longer survive. A mind so well disciplined in philosophy and policy, and matured by a due knowledge of mankind, ought to have known, that a multiplicity of rulers must necessarily be productive of distraction and anarchy; and that nothing could restore tranquillity and order, but the lenient hand of a mild and steady governor. For want of a due attention to these plain doctrines, which the very exigencies of the times might naturally have suggested, he deprived the state of its best friend and patron, and accelerated those evils which he pretended to redress. The storm, which might have soon been dispersed, once more collected with accumulated terrors; and bursting with all its fury upon the heads of this devoted people, involved every order, from the senator to the peasant, in the same universal desolation⁸².

⁸² Εἰ γὰρ πού τις δημοκρατία τις πύθηται, ἀλλ' οὐ βραχὺ χρόνον ἤμασι, μέχρις οὐ μὴτι μεγέθος, μηδὲ ἰσχύϊ ἰσχύϊ, ὥς τε ἡ ὕβρις σφίσι ἐξ ὑπερβουλῆς, ἢ φθόρου ἐκ φιλοτιμίας ἐγγιγνέσθαι. πολλοὶ τε αὖτις τυδικαυθῆναι οὐσαν, καὶ τοῦ τε καλλίστου τοῦ τε πλείονος τῆς οἰκουμένης τῆς ἑμφανέως ἀρχούσαν, καὶ πολλὰ μὲν ἀνδρῶν ἤδη καὶ διαφορὰ κατέλημμεν, πολλοὺς δὲ καὶ μεγάλους πλῆθους ἰσχύσαν, ταῖς τε πράξεσι καὶ ταῖς τύχαις παροδοσπαις καὶ ἰδίᾳ καὶ δημοσίᾳ χρωμένῃ, ἀδυνατοὶ μὲν ἐν δημοκρατίᾳ σωφρονέσθαι, ἀδυνατωτέρῳ δὲ μὴ σωφρονέσθαι ὁμολογῶσι. ὡς' ὅτι ταῦτα οὕτως ὁ, τὸ Βρότος ὁ Μάρκος καὶ ὁ Κασσιός ὁ Γαῖος ἐξελογισάμενοι, οὐκ αἰ πόλε τοι τε προσηλὴν καὶ τοι κατέμνησθαι αὐτῆς ἀπώλεσαν, οὐδ' αἰ μύριον αὐτίοι κακῶν καὶ ἰαυθῶν καὶ ταῖς ἀλλοῖς τοῖς τέλε ἀνδρῶν ἐγνοήθη. Dio Cass. 44. 2.

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General observations upon the state of the constitution at this period.—

Second Triumvirate.—Progress of the Imperial power under Octavius.

THOUGH Julius Cæsar has been usually esteemed the founder of the Imperial government, he can hardly be said to have done more than humble the insolence, and break the spirit of the aristocratic faction. Much less can the ruin of the public liberty be laid to *his* charge alone; that having been long ago effected by the combinations of the powerful nobility; who had erected a multitude of petty dynasties in every quarter of the empire, the most repugnant, in their own nature, to the genius of the ancient commonwealth, and inimical to the rights of the inferior citizens.

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That his design was to unite the numerous inhabitants of these vast territories under one supreme head, cannot be doubted. But when we consider the general tenor of his political conduct; his well-known clemency and greatness of soul; the many beneficial regulations already carried into execution; and various others apparently in his contemplation; we must acknowledge, that the people at large had a fairer prospect of enjoying the comforts of political order under his administration, than they had ever experienced in any part of the preceding century. The unfortunate catastrophe of his death hath, it is true, for ever concealed from us the more minute particulars of these projected improvements; but enough remains to justify us in affirming, that a monarchy, constructed upon such principles as he was known to profess, would have been as far removed

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moved from the stern and severe spirit of unbridled despotism, as pure and sober liberty is from republican anarchy.

It is natural to suppose that he would wish to perpetuate that power, which he had taken so much pains to raise. But having no issue of his own body, he adopted his great-nephew Octavius; enrolled him in the order of patricians; and by a careful and liberal education, and an early initiation into the nicer mysteries of civil policy, prepared him to fill his destined station with prudence and dignity¹.

The alarming event, which called this young heir to the succession so long before the expected time, probably effaced many of the best instructions of so judicious a master; gave different impressions to his tender mind; inspired him with a desire of revenge; and drove him to divers acts of cruelty and injustice, which must fill every human breast with horror and indignation; and which even his own heart could not fail to condemn. But his uncommonly good fortune, and length of days, gave him ample opportunities of atoning for his former misconduct, and of creating a power of his own; by which he, in fact, diffused tranquillity and happiness through the whole Roman world, though he both lived and died an absolute monarch.

But after all, though the ancient free constitution was thus entirely destroyed, the forms of it were, as yet, suffered to survive; perhaps to amuse the imaginations, and assuage the fears of a de-

¹ These anecdotes are collected from the Greek historian; who, speaking of the origin of the young Octavius, adds, Ορβανος δε ὑπο του Οκταβίου του πατρος καλαλεφθας, ιτραφη μιν παρα τε τη μηρι και παρα τη αδελφω αυτης Λουπιω Φιλιππῳ. αυξηθεις δε, συνδιτριβει τῳ Καίσαρι. απαις τε γαρ εκινος ην, και μεγαλας επ' αυτην ελπιδας εχων, ηγαπα τε και περιποιειν αυτον, ως και του ομοιου, και της εουσας, της τε ΜΟΝΑΡΧΙΑΣ διαδεχον καλαλεψαν. Dio Cass. 45. 1. And

soon after, Εξ ουν τούτων ὁ Καίσαρ μεγαλα ἐπ' αυτην ελπισας, ες τε τους ευπατρειδας αυτου ισχυαγι, και επι την αρχην ησκει, και παιδ' ὅσα προσηκει, τῳ μωλοδι κἀλως κἀι καλ' αξιαν τηλευσειν κρατος διοικησαι, ὑπαρχειν, ακριβως εξηπαιδευσει. λογεις τε γὰρ ἐξορικοις, ουχ' ὅτι τῃ των Λατινων, αλλα και τῃ τῃ γλωττῃ ησκειτο* και με ταις γραμματαις ἐξῆς μινως εξεπαιδο, τα τε πολιτικα και τα αρχικα ισχυρως εδιδασκετο. Id. 45. 2.

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cluded people, with the charms of favorite, but empty titles. No effort, however, having been made to erect any new formal system of government upon the ruins of the preceding, it subsided, in a course of years, into a despotism of fact, rather than of law; that was practised, more than avowed. When Octavius once found himself fixed in the Imperial throne, without danger of further opposition, his cool, cautious, and phlegmatic mind naturally induced him to accommodate the exercise of his power to the circumstances of the times, and the temper of the people. By prudently avoiding the parade of authority, he more securely enjoyed the reality; and by the uniform and persevering moderation of his conduct, whether sincere or affected is of little consequence, made his subjects believe themselves free, because they felt themselves happy.

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In this state was the constitution transmitted to his successors, without any established mode of conveyance, either hereditary, testamentary, or elective; and, in after-times, if not settled by the reigning Prince in his life, upon each demise, was most usually seized by a rapacious and profligate soldiery; who disposed of it, as best suited either their fancy or interest, to persons of every country and station; whether to a Roman or a barbarian, a general or a manipular. Thus was it ever beginning a-new, without a chance of arriving at any state of perfection; and though it sometimes had the good fortune to be administered by very just, wise, and able governors, from whom it occasionally received many substantial reparations, yet, from its radical defects, it fell into a gradual and incurable decay, till it finally vanished from the face of the earth.

The progress of the Imperial power during the reign of Octavius deserves the minutest attention; as it affords an instructive lesson to the subjects of all free states, to guard, with the most jealous circumspection, that inestimable blessing of political liberty; and to prevent them from being too lavish of their concessions,

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cessions, even to the most virtuous sovereign; well knowing, that power long given up cannot easily be recalled; and that what passed only as a compliment to a good prince, will assuredly be converted into a precedent, to justify the demands of a bad one. It will supply us likewise with a rare instance of an usurper ruling over a mighty people in tranquillity, whom he had subjugated by violence; and establishing that throne by wisdom and beneficence, which he had obtained by the most outrageous acts of cruelty and injustice.

The fervent prayer of the Syracusan matron, for the health of a living tyrant, certainly did no small credit to her discernment; and gave her a fair title to that immortality, which history has conferred upon her memory. Had the same prophetic devotion warmed the hearts of the conspirators against Cæsar; had it animated them with but half the zeal in supporting his authority, and guarding his life, which they most impolitically and cruelly exerted in destroying both; their names might have been recorded with honor; and their country would never have felt the heavy yoke of her new band of task-masters, by infinite degrees more tyrannical than the former; and which made the monarchy of Cæsar an age of gold¹. The perverseness of false patriotism may indeed exalt these mock-deliverers into heroes and demi-gods; but sober-minded moderation will consider them only as infatuated assassins.

As the cry of liberty is always at hand, to gloss over every arbitrary violation of the laws of nature and society, it was immediately called in to the aid of the conspirators; and the intimidated multitude was consoled with a promised revival of the extinct constitution, to spring with redoubled vigor from the blood of the deceased tyrant². But the people, either from being lost to the feelings of their

¹ ὅτι χρυσὴ τῇ τοῦ Καίσαρος μοναρχίᾳ φαινόται.
Dio Cass. 47. 15.

² Συνελθόντων αὐτοὶ εἰς ἐκκλησίαν, πολλὰ μὲν καὶ τοῦ Καίσαρος, πολλὰ δὲ καὶ ὑπὲρ τῆς δημοκρατίας.
Id.

their antient free condition, or from a diffidence in the sincerity of its pretended advocates, instead of exulting in the death of an oppressor, vented their grief in the bitterest lamentations, as for the loss of a parent. They celebrated his funeral obsequies with every mark of the sincerest concern; and, in the tumult of their affection, decreed divine honors to his memory ⁴.

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Even the senators were far from being unanimous in their approbation of the murder; and, after warm debates, *Whether Cæsar should be declared an usurper, or a lawful magistrate?* ratified all his former acts, by a considerable majority of voices, without allowing the most minute alteration. At the persuasion of Cicero they likewise voted a general amnesty of past injuries; and bestowed provinces upon the friends of Brutus and Cassius. But no part of these conciliatory terms produced their intended effect⁵. Mutual animosity had taken too deep root in the minds of the contending parties, to be appeased by a vote; each had recourse to arms; and, after various acts of reciprocal violence, a new association was formed by the partizans of the Cæsarean cause; who seized the whole power into their own hands, and divided the Roman empire between themselves, as if it had been a private patrimony⁶.

οὐ σφαγῆς υἱοὶ θάρσυν τε σφας, καὶ μηδὲ δεινὸς
προσδεδυχοῦντο ἐκλεινόν. οὐδὲ γὰρ ἐπὶ δυνάστει, οὐδ' ἐπ'
ἀλλῇ σπλιονίζῃ οὐδὲμιᾳ ἀπειλοῦνται αὐτοὶ ἐφασθαι,
ἀλλ' ἵνα ἐλευθεροὶ τε καὶ αὐτονομοὶ οἴησιν, οὐδὲς πολί-
τευνται. Dio Cass. 44. 21. See likewise the
oration of Brutus to the people. App. de
Bell. Civ. p. 514.

⁴ Βαμνοὶ τίνα ἢ τῇ τῆς σφας χωρὶς ἰδρυσαμένοιοι
—δυνεὶ τε αὐτῷ, καὶ καταρχοῦντο τῷ Καίσαρι, ὡς
καὶ δυνεὶ, ἐπεχίρουν. Dio Cass. 44. 51.

⁵ Ἡ συγκλήτος—των ὑπο Καίσαρος γεγενημένων
ἐψηφισατο μὴδὲν ἀλλατῆναι. Plut. in Ant. p. 78.
And again, Ἡ συγκλήτος ἀμνηστίας τινας καὶ συμ-
βασίς προτίθησθαι παρὸν. Καίσαρα μὲν ὡς δυνεὶ τιμῶν
ἐψηφισατο, καὶ κινῶν μὴδὲ το σμικροτάτοιοι ὡς ἐκείνος
ἀρχῶν ἐβυλευσθῶ τοὺς τε περὶ Βρούτου ἐπαρχίας τε

δεινῶν, καὶ τιμῶν ἀπιδόκει περιπέσας· ὥστε παύλας
οἰσθαι τὰ πραγματὰ καταστάσιν εἶναι, καὶ συγκρατῶν
ἀπειληφέναι τὴν ἀρίστην. Plut. in Cæf. p. 171.

And, more particularly, Κικέρων πολλὰ πρὸς τῷ
καίρει οικίῳ διελάων, ἐπίσει τὴν συγκλήτος, Ἀθηναίως
μιμησαμένην, ἀμνηστίας τῶν ἐπὶ Καίσαρι ψηφισασθαι,
ἵμαι δὲ τοὺς περὶ Κάσσιου καὶ Βρούτου ἐπαρχίας. ἴσχει
δὲ τῶν τῶν ἐδιν. Plut. in Cic. p. 486.

The speech of this famous orator, though
lost in the original, is still preserved in the
Greek language, in which his adherence to
his favorite principle, “Tempori servien-
“ dum esse, Ep. Fam. 9. 7.” is displayed in
its full colors. Dio Cass. 44. 23—34.

⁶ Διειρηματῶ τὴν συμπάσαν ἀρχήν, ὥστερ ἑστέον
παύλας ἢ ἀλλήλους. Plut. in Ant. p. 83.

F f

Formidable

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umvirate.
A. U. C.
710.

Formidable as the first triumvirate might have been, to those who entertained a due sense of the blessings of liberty, it was yet a gay scene of tranquility and order, in comparison of the second; which would have reflected dishonor upon the most blood-thirsty and unprincipled barbarians; and was a disgrace to the records of a civilized country.

The several constituents of this famous triple-league, were all, like their predecessors, of very different characters; and seem to have engaged in it from entirely different motives.

Lepidus.

Lepidus was the wretched dupe of his own vanity⁷. Destitute of those talents which are necessary to form an intelligent and active politician, he became a mere engine to promote the intrigues of his more subtle colleagues; till, being of no further use to either, he was deprived of his dignity; and, too contemptible to be the object of fear or jealousy, was suffered to end his days in banishment and obscurity⁸.

Antony.

Antony's views were to gratify his ambition, extravagance, and licentiousness; and, after the triumviral union was dissolved, he maintained the contest against his competitor with consummate valour and perseverance, till he sacrificed his own glory, as well as the interest of a vast empire, to a vicious and ungovernable passion⁹;

⁷ "Hic vir omnium vanissimus, neque
"ulla virtute tam longam fortunæ indul-
"gentiam meritus." Vell. Pat. 2. 80.

⁸ Ο μὲν δὲ καὶ αυτοκρατορὶς πολλὰ καὶ τὰς
τρεῖς ἀδελφοὺς γινόμενος, ἀρχὴν τῆς ἀποφύγης, καὶ
προγραφὰς ἐπὶ θανάτῳ τοσούτοις ὁμοίους, ἰδιωτικῶς
καὶ ἐν τοῖς τῶν προγραφῶν ἀρχαῖς ὕστερον παρὰ
μὲν, διέβησι. App. de Bell. Civ. p. 743.
Dio Cass. 54. 15. "Spoliata quam tueri
"non poterat dignitas." Vell. Pat. 2. 80.
"Supplicem concessa vita Circeios in per-
"petuam relegavit (sc. Augustus)." Suet.
in Oct. 16.

⁹ "Furor Antonii quatenus ambitu non
"ingeriret, luxu et libidine extinctus est.—
"Patris, nominis, togæ, fascium oblitus,
"totus in monstrum illud ut mente, ita

"animo quoque et cultu desciverat." Flor.
4. 11. This passage refers to his quitting
the Parthian expedition, for the sake only
of spending the winter with Cleopatra;
and we find the same fact described in still
more animated language by the Greek histo-
rian: Τοσούτῃ μὲντοι παρασκευῇ καὶ δυνάμει, ἣ καὶ
τοὺς περὶ Βασιλέων Ἰνδῶν φόβους, καὶ πᾶσαι ἐκρα-
δαν τῇ Ἀσίᾳ, ἀποστῆναι αὐτῇ διὰ Κλεοπάτρας γινώσκει
λέγουσι. σπουδῆς γὰρ ἐκινή διαχρῆμασαι, τῶν πο-
λέων ἐξαιγμάτων προκρίνου, καὶ πᾶσι χρῆσασθαι
τεταραγμένως· οὐκ οὔτα τῶν αὐτῶν λογισμῶν, ἀλλ' ὅτι
φαρμάκον τῶν ἡγεσιῶν παρὰ τὴν αὐτῶν πρὸς ἐκείνην
αὐτῶν, καὶ πρὸς τῇ ταχέϊ ἐπαλθῶν μάλλον, ἢ πρὸς
τῇ κράτεια τῶν πολεμικῶν γινόμενῃ. App. de
Bell. Parth. p. 158.

and

and died an ignominious death in the arms of an abandoned prostitute, who had deceived and betrayed him.

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The peculiar and critical situation of Octavius, in some measure, lessens the atrociousness of *his* usurpation, and gives it something like the appearance of an act of necessity. The blood of his friend and benefactor cried aloud for vengeance; he was himself surrounded on all sides with rivals and enemies; and the safety of his life, as well as of his inheritance, required the utmost exertions both of his courage and prudence. Thus, under pretence only of asserting his own personal and family rights, he gradually triumphed over every opponent; and, by gentle, but steady approaches, made his way to that sovereign dominion, which was the principal object of his ambitious wishes¹⁰.

Octavius.

Of such persons, and upon such principles, was formed this second triumvirate, deservedly odious to the Roman people; though the most detestable of the whole was Antony¹¹. Unlike as they were to each other in sentiment and disposition, power and revenge were, as usual, their common objects, which they pursued without the least restraint of remorse or conscience; threatening destruction not only to the murderers of Cæsar, but to all others whom they suspected of the remotest disaffection to their usurped authority. The most illustrious and respectable characters fell the unpitied victims of this general proscription, and Cicero among the rest; in spite of the earnest intreaties of Octavius, to whom he had paid a mean and servile court¹², to protect him from their fury.

¹⁰ 'Οὕτω μὲν—Οὐλανῖος—ἡ ψαῖο τῶν πραγμάτων—
καὶ αὐτὰ καὶ καίσαρ καὶ καίσαρ καὶ καίσαρ, παῖς μὲν
αὐτοῦ καὶ καίσαρ, παῖς δὲ καίσαρ καὶ καίσαρ.
πρῶτον μὲν γὰρ, ὡς καὶ ἐπὶ μορῇ τῇ τοῦ κληροῦ διαδο-
χῇ, καὶ ἰδιωτικῇ καὶ μετ' οὐλοῦν, αὐτοῦ οὐλοῦν τινος,
ὡς τῇ αὐτοῦ ἐπὶ τῇ οὐλοῦν οὐλοῦν οὐλοῦν οὐλοῦν,
αὐτοῦ ἐπὶ τῇ οὐλοῦν οὐλοῦν οὐλοῦν οὐλοῦν, καὶ τῇ οὐλοῦν

καὶ αὐτοῦ καίσαρ. Dio Cass. 45. 5.

¹¹ Ἡ δὲ καὶ τὰ πολλὰ Ῥωμαῖοι παρὰ τὴν ἑαυτοῦ
τῶν ἀρχῶν καὶ τὸ αὐτοῦ ὁ αὐτοῦ τῆς αὐτοῦ ἐπὶ τῇ
Plut. in Ant. p. 84.

¹² Ἐδοξε δὲ καὶ ἀποδεξασθαι ἀποδεξασθαι τῇ
Καίσαρος φίλῃ. Plut. in Cic. p. 488. id. in
Brut. p. 238.

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But, not to dwell too long upon these melancholy and disgusting scenes, suffice it to observe, that in these deplorable times, the voice of justice was totally put to silence; the arbitrary will of the tyrants was the law of the day; and the whole empire was involved in all the horrors of civil dissension¹³.

Thus was the first entrance of Octavius upon the stage of public life attended with every inauspicious omen, that could alarm the fears, and aggravate the calamities, of a distracted and divided people. His rank, fortune, and near relation to the late emperor, had made him the principal character in the second triumvirate. Stimulated both by the impetuous passions of unbridled youth, and and the irresistible importunities of his merciless colleagues, he had too readily concurred in all those inhuman massacres, which rendered the fairest regions of the world a loathsome scene of blood and desolation; and the most conspicuous and unblemished personages of the times, the wanton victims of ambition and revenge. Deeply practiced in the ways of murder, from henceforth what could be expected from him, but an unremitting course of the most studied and refined tyranny?—But the tempest gathered, loured, and dispersed.—Having, by a final triumph over his only surviving rival, acquired the full power of becoming a tyrant at pleasure, the remainder of his life was an exemplary pattern of forbearance and mercy¹⁴.

Being therefore, by his peculiar felicity, raised to a state of such transcendent power, where is the wonder that a superstitious age

¹³ Such as we find them described in the pathetic strains of the Mantuan muse:

“Ubi fas verum atque nefas, tot bella per orbem,

“Tam variae scelerum facies.”

Virg. Georg. 1. 505.

And more at large by Dio Cass. 47. 8—19.

¹⁴ Εἰ τις καὶ τῶν προτέρων τῶν ἐν τοῖς ἐμφυλίοις πολέμοις γινομένων, ἐμνημονεύον, ἐκεῖνα μὲν τῇ τῶν πραγμάτων ἀνάγκῃ ἀντιδιδόναι· τῇ δὲ διὰ τῆς γυναικὸς αὐτῆς, ἐξ οὗ τὸ κράτος ἀναμφιδόλου ἐσχεν, ἐξετάζειν ἡξίου. πλείονος γὰρ δὴ τὸ διαφέρειν ὡς ἀληθῶς παρὰ τὸν νόμον. καὶ τὸ μὲν κατὰ ἑκάστον αἱ τῶν πραγμάτων ἐπιζητεῖται ἀκριβῶς ἐννοεῖται. Dio Cass. 56. 44.

should

should place its hopes in him, as a being of a superior order; as a tutelar deity, that was to restore peace to a disquieted world? "—A very pardonable strain of poetical flattery, at such a crisis!—A young conqueror thus appearing in all the lustre of victory, and, even by the confession of his enemies, adorned with many valuable accomplishments, could not fail to strike the imagination, and excite the applause of a disorderly people, torn in pieces by faction, and dispirited by oppression; and to incline them to make an easy sacrifice of those liberties, which they had themselves so grossly abused, and were now no longer capable of enjoying¹⁶.

The enormous bulk of the Roman empire itself was, likewise, another strong leading cause to this universal and implicit submission. Being then extended over almost every region of the known world, it was grown much too unwieldy to be governed by a riotous and capricious populace; and therefore naturally took refuge in the arms of a victorious hero", who, by his sole authority, was the best enabled

³⁵ Thus Virgil supplicates the gods, whom he supposes the more immediate protectors of the Roman state :

**“ Hunc saltem everfo juvenem succurrere
“ feclo**

"Ne prohibete." Georg. 1: 500.

And again,

“ Hic vir, hic est, tibi quem promitti sæ-
“ pius audis,

“ Augustus Cæsar, divi genus; aurea condet
 “ Sæcula qui rursus Latio, regnata per arva
 “ Saturno quondam.” Æn. 6. 791.

¹⁶ In the funeral oration pronounced over Augustus by his successor Tiberius, the historian puts the following words into the mouth of the orator ; Ὁδιντες καὶ ὑμεῖς, καλὸς πιπνῆτις καὶ ἄρδης φροονῆτις, οὐκ ἠσυχῶσι, οὐτὶ ἐπιτρέψα-
τι αὐτῷ ἰδιωτισαί, ἀλλ' αἶτι ἐν ἰδοῦσι, ὅτι δημοκρα-
τία μιν οὐκ ὀτ' αὖ τῆλικούτοις πρᾶγμασιν ἁρμοσίη,
πρὸς αἷα δι' ἰὸς ἀνδρὸς μάλισ' αὖ αὐτὰ σῶσις,
λόγῳ μιν οὐτὶ ἐκπαλῶν ὡς τῇ αὐτονομίᾳ, ἔργῳ δὲ

ις τους φαρισσαίους, ἡδυνάσται· καὶ λέγουσι μὲν, οὐ
 αὐτοῖς τοῖς ἔργοις ἐδόξε μακαρίαι, ποροκρινάστας, παγ-
 νασαὶ χρεόν γὰρ τίνα ὑμῶν προσήκει. Dio Caff.
 56. 39.

To the same effect, it was said in excuse for him, "Non aliud discordantis patriæ remedium fuisse, quam ut ab uno regeretur." Tac. Ann. i. 9.

" Thus says the same candid and judicious
 writer of the commencement of the reign of
 Octavius; " *Posito triumviri nomine, con-*
 " *sulem se ferens, et ad tuendam plebem*
 " *tribunitio jure contentum; ubi militem*
 " *donis, populum annona, cunctos dulcedine*
 " *otii pellexit; infurgere paulatim, munia*
 " *senatus, magistratum, legum in se trahere,*
 " *nullo adversante; cum ferocissimi per*
 " *acies, aut proscriptione cecidissent: ceteri*
 " *nobilium, quanto quis servitio promptior,*
 " *opibus et honoribus extollerentur: ac novis*
 " *ex rebus aucti, tuta et præsentia, quam*
 " *vetera*

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enabled to modify, and reduce to order, the confused elements of an ill-constructed republic.

The actual commencement of the Roman monarchy is fixed, by the most intelligent writers, to the time when Octavius returned in triumph to Rome, after having settled the affairs of the East, in which the party of Antony had hitherto prevailed. By such events being at once exalted above all other princes of the earth, this favorite son of fortune began, himself, to look down from his tremendous eminence with giddiness and horror. The resentment of a magnanimous people, deprived of their liberty; the Ides of March; the just and tragical end of the generality of usurpers, haunted his imagination; admonished him to renounce his authority; and, by a policy, the direct reverse of his illustrious predecessors, to seek for shelter from the storm in privacy and retirement¹⁸.

But before he came to a final resolution, upon a point of equal importance both to his own personal safety, and the future welfare of the Roman empire, he communicated his doubts and apprehensions to Agrippa and Mæcenas, upon whose integrity, wisdom, and friendship, he had the firmest reliance; though they happened to differ totally in their opinions upon the expediency of the measure.

The first applauded the proposal as highly just and popular, earnestly pressing him to an immediate resignation; while the other represented it as impolitic and fatal; and with equal warmth dissuaded him from it¹⁹. The result of this consultation was, that he

“vetera et periculosa mallent. Neque pro-
vinciæ illum rerum statim abnuebant,
suspecto senatus populique imperio ob cer-
tamina potentium, et avaritiam magistra-
tuum: invalido legum auxilio, quæ vi,
ambitu, postremo pecunia turbabantur.”
Tac. Ann. 1. 2.

¹⁸ Ταῦτα μὲν ὡς ἐν τῇ βασιλείᾳ, καὶ ὡς ἐν τῇ δημοκρατίᾳ, τὰς τε δυναστείας, πῶς τε καὶ οὐκ οὐκ

ἐπίσκοπος ἐτίθει, καὶ πρᾶξαν οἱ Ῥωμαῖοι καὶ ἰσχυροὶ. ἐκ δὲ τούτων μεταρρυσθῆναι αὐτοῖς ἀκριβὲς ἡρξάθη· καίτοι τοῦ Καίσαρος βουλευσάμενος τὰ τε ὅπλα κατέδιδου, καὶ τὰ ἀρσενικά τῇ τε γερουσίᾳ καὶ τῷ δήμῳ ἐπιτελεῖται. Dio Cass. 52. 1.

¹⁹ The substance of the arguments used on both sides is still preserved in the form of speeches or addresses, and are curious remains of antiquity, as they contain every reason

he more prudently adhered to the latter advice; partly, from a just dread of the danger of reducing himself to a private station; and partly, from the uncertainty of doing any real service to the public, by trusting the reins of government to the hands of a turbulent and factious multitude²⁰.

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As Mecænas is, in some degree, accountable for the consequences of this determination, it ought to be remembered to his honor, that he exhorted him, at the same time, to avoid all invidious affectation of absolute power, and to have recourse to the aid of a select council, to be chosen out of the best men of the nation; not by lot, or in compliment to their own personal solicitation, but merely in consideration of their superior characters and abilities. "Thus," says he, "would good men receive the rewards due to their real merit without envy; and bad ones be punished without exciting sedition: affairs of state would be duly administered, without the necessity of referring them on all occasions to the judgment of the multitude; or of exposing them to the hazard of being disturbed by the seditious declamations of popular orators."

Moderate as this advice was in its tendency, Octavius did not chuse to adopt it in its utmost latitude; but advanced by slow and cautious gradations, so as to avoid every occasion of inflaming the suspicions of the people; leaving the remainder of the plan to be com-

reason that can well be urged upon each side of so material a question: for these, therefore, the reader is referred to Dio Cass. 52. 1—40.

²⁰ "De reddendâ republicâ bis cogitavit: — Sed reputans, et se privatum non sine periculo fore, et illam plurium arbitrio temere committi, in retinendâ perseveravit." Suet. in Oct. 28.

²¹ Μη γὰρ τοι οἰσθῆς, ὅτι τυραννῆσαι σοί, τοῖς τε δήμοις καὶ τῇ βουλῇ δειλωσαμένη, παραινῶ. τούτο μὲν γὰρ οὐτ' αὐτοῦ ποτε ἔπειν, οὐτ' αὐτοῦ πράξαι τολμήσας. ἔπειν δὲ δὴ καὶ πάλαι καὶ χρεῖσθαι καὶ σοί

καὶ τῇ πόλει γίνοιτο αὐτῷ, τίς τε πάντα τὰ προσήκοντα αὐτοῖς σὶ μάλιστα ἀρετῇ νομοθετῆς, μηδὲς τῶν πολλῶν μὴ ἀντιλεγόντος αὐτοῦ, μηδὲ παρτισημονίας. — ὅς τε ἐγχειρόμενοι, ἀπ' ἀρετῆς, ἀλλὰ μὴ κληρῶν καὶ σπουδαίῃ, ἀποδιμενύνται· καὶ οἱ μὲν ἀγαθοὶ αὐτοῦ φθόρου τιμῶνται, οἱ δὲ κακοὶ αὐτοῦ συγασίως κολάζονται. οὕτω γὰρ αὐτῷ μάλιστα τὰ τε κρατίστηματα ὁρθῶς διοικηθῆναι, μήτε εἰς τὸ κοινὸν ἀναφερομένη μήτε ἐν τῇ φανερῇ βουλευομένη, μήτε ἐν τοῖς παρακίλευτοις ἐπιβρεπομένη, μήτε ἐν φιλοτιμίας κινδυνεύουσα. Dio Cass. 52. 15.

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pleted by his successors, as the circumstances of future times might admit²².

Soon afterwards he obtained the title of "Imperator;" a complimentary term of respect, with which the soldiers were wont to salute their general in the field of battle, after any signal victory, achieved by his conduct and bravery. As such, it was repeated, as often as the respective events required; and was enjoyed by many illustrious warriors at once, without the least disparagement of their rank or quality²³. It had even been assumed by Octavius himself on twenty-one different occasions²⁴; but was now used in a more exclusive sense, as a permanent attribute of sovereignty, guarded with a variety of important prerogatives, as when conferred for the same purpose upon Julius Cæsar²⁵. In this manner it was made

²² 'Ο δὲ δὴ Καίσαρ ἀμφότερος μὲν σφαιρῶν καὶ ἐπὶ τῇ πολιτικῇ καὶ ἐπὶ τῇ πολυλογίᾳ, τῇ τε παρρησίᾳ, ἰσχυρῶς ἐκτελεῖ τα δὲ δὴ τοῦ Μαικήνου μάλλιν ἰδιόθεν μάλιστα καὶ παρὰ τοῦ ἐνδὸς ὥσπερ ὑπερδίδωμι ἐπιδείκνυται φόβῳ καὶ σφαιρῇ τε, ἀδρόνως μεταρρύνει τοὺς ἀνδράποδες ἐδιδότας· ἀλλὰ τὰ μὲν παραχρημα μισέουσιν, τὰ δ' ὑπεροῦν καὶ τὰ καὶ τοῖς μέγα ταῦτα ἀρξέουσιν ποιῆσαι καὶ ἐκτελεῖν, ὥς καὶ κατὰ καιροὺς μάλλιν ἐν τῇ χρόνῳ γινώσκονται. Dio Cass. 52. 41.

²³ "Tiberius—Blæfo tribuit, ut Imperator a legionibus salutaretur: prisco erga duces honore, qui bene gesta republica, gaudio et impetu victoris exercitus clamabantur. Erantque plures simul imperatores, nec super cæterorum æqualitatem. Concessit quibusdam et Augustus id vocabulum, ac tunc Tiberius Blæfo." Tac. Ann. 3. 74. Grav. de Imp. Rom. 5.

²⁴ "Nomen Imperatoris semel atque vicies partum." Tac. Ann. 1. 9. Ἐκείνην πολλὰ καὶ πρότερον, πολλὰ καὶ δὲ καὶ ὑστερον ἀπ' αὐτῶν τῶν ἐργῶν ἐλάβην, ὥς καὶ ἐν ἐκείνῳ ὀνόματι αὐτοκράτορος ὄχοντο. Dio Cass. 52. 41.

²⁵ This was likewise in consequence of the advice of Mæcenas: Εἰ γὰρ τὸ μὲν πρᾶγμα τὸ τῆς μοναρχίας ἀξίον τὸ δ' ὄνομα τῆς βασιλείας ὥς καὶ

ἐπικρατοῦς φόβῳ, τοῦτο μὲν μὴ προσλαβῆναι, τῇ δὲ δὴ τοῦ Καίσαρος προσήγορον χρῆμα, αὐτοκράτορος. καὶ οὐ καὶ ἄλλων τινῶν ἐκτελεῖται προσδοκῶν, δυστοῦ μὲν σοὶ τῇ τοῦ αὐτοκράτορος, ὥσπερ καὶ τῇ πατρὶ σου ἐδωκεν· σέβουσιν δὲ σὲ καὶ ἑτέρα τινὲ προσήγορον, ὥς σὲ παρὰ τοῖς βασιλείαις ἔργον, αὐτοῦ τοῦ τῆς ἐκτελεῖται αὐτῆς ἐκτελεῖται, καρποῦσθαι. Dio Cass. 52. 40. He accordingly τῇ τε αὐτοκράτορος ἐκτελεῖται ἐκτελεῖται. λίγην δὲ οὐ τῇ ἐπὶ ταῖς ἡλικίαις κατὰ τὸ ἀρχαίον δίδωμεν τισιν, ἀλλὰ τῇ ἐπὶ ταῖς τῇ τοῦ κράτους διασημαίνουσιν, ὥσπερ τῇ πατρὶ αὐτοῦ τῇ Καίσαρι καὶ τοῖς παῖσι καὶ τοῖς ἐκγονοῖς ἐκτελεῖται. Id. 52. 41. As this learned historian has taken a great deal of pains to point out the different senses in which the title of *Imperator* was applied to the Cæsars, it may not be improper to lay before the reader some other passages, in which the same distinction is very particularly explained. Thus, speaking of the honors conferred by the senate on Julius Cæsar, he adds, Το, τῇ τοῦ αὐτοκράτορος ὀνόματι, οὐ κατὰ τὸ ἀρχαίον ἐπὶ μόνον, ὥσπερ ἄλλοι τε καὶ ἐκείνος ὥς πολλὰ καὶ ἐκ τῶν πολλῶν ἐκτελεῖται, οὐδ' ὥς δὲ τινὰ αὐτοτελῆ ἡγεμονίαν ἢ καὶ ἄλλαν τινα ἐξουσίαν λαβόντες, ὀνομαζόμενοι, ἀλλὰ καθάπαξ τοῦτο δὴ, τὸ καὶ τῇ τοῖς τοῦ κράτους ἐκτελεῖται δίδωμεν, ἐκτελεῖται

made hereditary in all future princes; was adopted by Charlemagne, who called himself the successor of the Roman Cæsars; and has ever since been esteemed the highest mark of distinction among the modern potentates of Europe.

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One of the first acts of Octavius, when firmly seated in the Imperial throne, was to reform the senate; which, during the confusion of the late civil wars, had been shamefully debased by the intrusion of an heterogeneous band of foreigners, foldiers, and even slaves; so as to be wholly declined from its primitive lustre, as well as multiplied to more than a thousand. As this scrutiny had usually been made by the censors, he took upon himself that office, in conjunction with Agrippa; and having convinced many of their own unworthiness, by a fair appeal to their consciences, he persuaded them to abdicate their seats, which he supplied with others of more unblemished reputations, limiting their number, for the time to come, to six hundred ²⁷.

He

τοτε πρῶτη τι καὶ πρῶτον, ὥσπερ τι κορυφαίον, προσ-
δωκεν, καὶ τοσαύτη γὰρ ὑπερβολὴ καλαρίας ἐχρησάμενος,
ὥστε καὶ τοὺς παύδας τοὺς τι ἐργοντοὺς αὐτοῦ οὐλοῦ κα-
λίσσασθαι ἠρξάμενος, μὴ τι τοιοῦτον αὐτοῦ ἐχρῆσθαι,
καὶ γὰρ οὐκ ἔστι οὐδὲν. ἴδμεν περὶ καὶ ἐπὶ σωφίας τοὺς
μὴ ταῦτα αὐτοκρατορίας τῇ ἐπιβολῇ αὐτῇ, ὥσπερ τις
ἰδία τῆς ἀρχῆς αὐτοῦ οὐσα, καθάπερ καὶ ἡ τοῦ
Καίσαρος, ἀφαικῇ. οὐ μόνον καὶ τοὺς ἀρχαίους καὶ τοὺς
αὐτοῦ καταβύθους, ἀλλ' ἐν ἑκάστῳ καὶ διὰ τοῦτο καὶ
διετίθει ἑν' αὐτοῖς ἐπαγίλαι, ὅταν καὶ τὰ ταῦτα αὐτοῦ
αὐτοκράτειρα. Ὅτι μὲν γὰρ αὐτοῦ τοῦτο αὐτοκρατορίας,
ἀπαξ τῇ προσσηγορίᾳ ταύτῃ, ὥσπερ καὶ ταῖς ἀλλαῖς,
καὶ πρῶτη γὰρ χρῆται· ὅς δ' αὖ καὶ διὰ πολέμων ἀξίον
τῇ αὐτοῦ καλοῦσθαι, οὗτοι δὲ καὶ ἐκείνη τῶν ἀπὸ τοῦ
ἀρχαίου προσλαμβανουσιν καὶ τούτου καὶ διυλίσαν-
τες καὶ τρίτον, πλεονακίαν τι, ὅσας αὖ παρὰ σὺν ὅις
αὐτοκρατορίας ἐκονομαζέσθαι. Dio Cass. 43. 44.
And in a subsequent passage applied to Au-
gustus, Τῶν τοῦ αὐτοκρατορίας προσσηγορίᾳ διακρίσεις οὐ
μὲν οὐ καὶ πλεονακίαν τινας, ἀλλὰ καὶ οὐ ἀλλοὶ παύδας,
πρὸς δόξαν τῆς αὐτοκρατορίας σφῶν ἐξουσίας, αὐτῇ τῆς
τοῦ βασιλέως τοῦ τι διακρίσεως ἐκκλησίας, ἐχρῶσιν.
Id. 53. 17.

²⁶ "Senatorum affluentem numerum de-
formi et incondita turba, erant enim su-

"pra mille, et quidam indignissimi, et post
"necem Cæsaris per gratiam et premium
"adlecti, quos Orcinos vulgus vocabat, ad
"modum pristinum et splendorem rede-
"git." Suet. in Oct. 35. Μὴ ταῦτα
τιματῆρας οὐκ ἐν τῇ ἀρχῇ, ἀλλὰ ἐν τῇ
δυνάτει, καὶ τῇ βουλῇ ἐξέτασεν. πολλοὶ μὲν γὰρ
ἐπὶ αὐτῇ, πολλοὶ δὲ καὶ περὶ τῆς ἀξίας ἐκ
τῆς ἀφαικῆς ἐκκλησίας ἐβούλευον, ὥστε καὶ ἐκ
χρῆσθαι τὸ πλεονακίαν τῆς γένουσις ἀνέστησεν. τα-
ύτους οὐκ ἐκκρίνας βουλήδους, αὐτοῦ μὲν οὐδὲν αὐτοῦ
ἀπαλίσθη, πρὸς τῇ ἀρχῇ δὲ σφῶν ἐκ τοῦ συνεδρίου
τοῦ τι γένους καὶ τοῦ βίου διακρίσεως ἐκείνοις γινώσθαι,
τὸ μὲν πρῶτον πειρησάμενος καὶ ἐκείνοις ἐκκρί-
σθαι τὸν συνεδρίου, ἐπὶ δὲ καὶ ἀλλοὺς ἐκείνους καὶ
τις ἀφαικῆς μνηστῆρας σφῶν ἐκκρίνας. καὶ αὐτοῦ
ἐκκρίνας μὲν οὐδὲν, τὰ δ' ονομαζέσθαι τῶν διυλίσαν ἐξέ-
τασεν. τοῖς γὰρ πρῶτοις, ὅτι μὴ ἐχρῶσθαι, ἀλλ'
ἐκείνους ἐκκρίνας ὅτι, ἀφαικῇ τὸ συνεδρίον, ὥστε αὐ-
τοῦ μὴ ἐκκρίνας οὐκ ἐκκρίνας. οὗτοι μὲν οὐκ ἐκκρίνας
ἐκκρίνας. Dio Cass. 52. 42.

²⁷ Εβούλευσάντο μὲν τρεῖς αὐτοῦ καὶ τὸ
ἀρχαίοι ποιῆσαι, καὶ πᾶσι ἀρχαίοις τομίζων εἶναι,
τοσούτους ἀξίους τοῦ συνεδρίου, σφῶν ἐκκρίνας· δυσχε-
ραστῆναι δὲ πᾶσι ὁμοίως, (τῇ γὰρ πολλὴ πλεονακίαν
ἐκκρίνας)

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He likewise extended the value of their qualifications; and when he found any who were deserving of a place among them, but without a fortune adequate to the rank, made up their deficiencies out of his own privy purse²⁸. He then laid down certain rules for the time and mode of their assembling; and asked their advice on every occasion of consequence; encouraging a general freedom of debate, and an unrestrained communication of sentiment, in all matters that were proposed to them for their deliberation²⁹. With all this, himself appeared under no other character, than that of *Prince of the Senate*³⁰; a title, indeed, of distinguished eminence, much revered in the old republic, and which always carried with it a considerable weight and influence; but, as it conveyed no greater legal privileges, than that of being the *First among Equals*, gave no umbrage by its novelty.

In the midst of these endeavours to augment the splendor of this august body at home, he was equally careful to prevent the members of it from forming parties, and creating seditions in the more distant provinces. With this view, he prohibited them from leaving Italy without his express consent, except only to visit their estates in Sicily, or in the southern provinces of Gaul³¹; which law continued in full force through several succeeding centuries³².

Being

επιμετοῖσι ἐν αὐτῇ τοὺς διαγραφισμοὺς ἰσισθαι, φοβησθαι μᾶλλον αὐτοὺς μὴ ἰδιωτισθῶσι, ἢ προσδοκῶν ὅτι καὶ βουλευταὶ, συνελθόντες τοὺς ἑκατοστούς καλεσθήσονται. Dio Cass. 54. 14.

²⁸ "Senatum censum ampliavit: ac pro octingentorum millium summa duodecies HS. taxavit, supplevitque non habentibus." Suet. in Oct. 41. Τίς μὲν γὰρ οὐκ αὖ τῶν βουλευτῶν αὐτῶν μνημονεύουσιν; ὡς τὸ φανερὸν ἐκ τῆς γαστρὸς ἐπιπολεῖσαι αὐτοῖς ἀφελόν, τὸ λοιπὸν αὐτῶν τὴν τιμὴν ἰσμενῶν, καὶ τὴν αὐξήσει τῶν τιμημάτων ἐμμεγαλύνει, τῇ τε δόσει τῶν χρημάτων ἐπλητύνει. Dio Cass. 56. 41.

²⁹ Οἱ ἐξ ἑσῶ καὶ αὐτοὺς τῆς γυναικὸς ἰδίδου, καὶ μεθ' ὧν συμμεθίστατο· ὅν παντὰ τὰ μεγίστα καὶ ἀναγκαῖα τάχα καὶ ποτὶ ἡ ἐκ τῆς συνίδου, ἢ καὶ οἰκοί, διὰ τὴν

ἐλπίαν καὶ διὰ τὴν ἀσθενεῖαν τοῦ σωματός, παραλαμβάνων ἄλλοτε ἄλλους, ἐπικρατεῖ. Dio Cass. 56. 41.

³⁰ Προκρίβας τῆς γερουσίας ἐπικληθῆναι, ὥστε ἢ τῇ ἀκριβοὶ δημοκρατίᾳ ἐπινομήτο. Dio Cass. 53. 1. "Augustus, cuncta discordiis civilibus fecta, nomine *Principis* sub imperium accepit." And again, "Non regno, neque dictatura, sed *Principis* nomine constitutam rempublicam." Tac. Ann. 1. 1 & 9.

³¹ *Gallia Narbonensis*, which corresponds with the modern provinces of *Languedoc*, *Provence*, and *Dauphiny*.

³² Προσαπαιτεῖται τοὺς βουλευταὶ μὴ ἐκδημεῖν ἐξ τῆς Ἰταλίας, αἱ μὴ αὐτοῖς τῶν κλεινῶν, ἢ καὶ ἐπιτρεψῶν καὶ τοῦτο καὶ διὰ αὐτῶν φυλασσέσθαι. ὡς γὰρ

Being now entered upon his sixth consulship, and determined to regulate his conduct by the established rules of the ancient constitution, he divided the "Fasces" equally with his colleague, Agrippa; and at the expiration of his magistracy, took the customary oath, that he had not wilfully transgressed the laws, or done injury to any man³³.

With a strict attention to the same temperate and wholesome policy, he made it his business to preserve all the external forms of the old commonwealth, and the rights of the respective magistrates, in their original channels. But to reconcile the exercise of them with his own sovereign power, he assumed every one of the highest offices in their turn (the dictatorship alone excepted³⁴); and, in conjunction with his partners, discharged all the duties respectively belonging to each.

Whether he ever actually took upon himself the title of censor, has been much doubted; though he certainly revived³⁵, and occasionally executed, several of the most important functions of that venerable office; particularly that already mentioned of reforming the senate, together with the general superintendence of the manners of the people³⁶.

By

γὰρ οὐκ ἐστὶν τῇ Συκίᾳ καὶ τῇ Γαλιταίᾳ τὴν αἰεὶ Ναρβόνα, οὐδαμῶς ἄλλοι βουλευτὴ ἀποδημήσαι ἐξέτη καὶ γὰρ, διὰ τὸ συνεγγυς, καὶ διὰ τὸ ἀσπλὸν τοῖς τοῖς κρημαῖοι τῶν ἀνδρῶν, διδόναι τοῖς γὰρ τὴν κληρονομίαν αὐτοῖς, καὶ αὐτοὺς παρὰ τὴν ὁμοίαν αὐτῶν ἰδιότησιν, ἀπὸ τῆς. Dio Cass. 52. 42. In allusion to the same law Tacitus observes, "Galliae Narbonensi ob egregiam in Patres reverentiam datum, ut senatoribus ejus provinciae, non exquisita principis sententia, jure quo Sicilia haberetur, res suas invisere liceret." Tac. Ann. 12. 23.

³³ Τῷ δὲ ἱεὺς ἐστὶν ὁ Καίσαρ ἡγεῖς, καὶ ταῖς ἀλλὰ καὶ τὸ νομιζόμενον ἀπὸ τοῦ παντὶ ἀρχαίου ἐποικιστῶν, καὶ τοὺς φανερὰς τῶν ἑαυτῶν τῶν Ἀγρίππας συναρχοῦν, οἱ καὶ τὸ ἐπιβάλλον παρὰ τὸν αὐτοῦ

τῇ ταῖς ἱταίᾳ ἐχρησάτο καὶ διαξῆς τοῖς ὅροις καὶ τὰ πατρίαν ἐπηγάγε. Dio Cass. 53. 1.

³⁴ Ἰνα γὰρ μὴ ἐκ δυνάστεως, ἀλλ' ἐκ τῶν νόμων τῆς ἐκείνῃ δοκῶσι, καὶ δ' ὅσα ἐν τῇ δημοκρατίᾳ μετὰ παρὰ ἑκὼν σφίσις ἰσχύουσιν, αὐτοῖς τοῖς οἰομασι, χωρὶς τῆς δικτατορίας, περὶποιήσαντο. Dio Cass. 53. 17.

³⁵ "Censores creari desitos longo intervallo creavit." Suet. ib. 37.

Οὗτοι γὰρ τῇ ἀρχῇ ὑπέστη, εὐδὺς ἱταίους τιμῆς —ἀπεδείκνυν— καὶ τότε δὴ ὁ Ἀνγούτος, καὶ πάλιν ἐκείνῃ ἀντιδιδόντων, πολλὰ τῶν ἐς αὐτοὺς ἀνηκουστῶς ἐπράξε. Dio Cass. 54. 2.

³⁶ "Recepit et morum legumque regimen aequae perpetuum: quo jure, quaquequam sine censura honore, census tamen populi ter egit: primum ac tertium cum collega, medium

By the advice of Mæcenas, he likewise augmented the number both of the ministerial and judicial officers, whereby he was supplied with a constant succession of experienced counsellors; and whenever he was chosen consul, always required that two others should be joined with him; thinking it no diminution of his own dignity, not to enjoy that honor alone¹⁷.

The tribunate, an office of the first consequence, and liable to no control even in the ages of the most perfect liberty, was conferred upon him for life by a decree of the senate¹⁸. To this he always paid a very close attention; and though several objects of its power were lost, together with the republic, yet he frequently convoked the people by their tribes; restored the antient rights of the "Comitia"; supplicated in them for magistracies in the usual

"medium solus." Suet. in Oët. 27. To which it is not improbable that Horace alludes in the following compliment,

"Cum tot sustineas et tanta negotia solus,
"Res Italas armis tuteris, moribus ornes,
"Legibus emendes." Ep. 2. 1. 1.

Επιμελητής τι τῶν τρωπῶν ἐς πῦντι παρακλήδης διχηροτοῖνθι, καὶ τῆν ἐξουσίαν τῆν μαι τῶν τιμητῶν ἐς τοὺς αὐτοὺς χρόνους. Dio Cass. 54. 10.

The same author, in a preceding passage, is still more particular, where, speaking of the power exercised by the emperors in general, he observes; Εὐ δὲ τοῦ τιμητῶν, τοὺς τι βίους καὶ τοὺς τρωπούς ἡμῶν ἐξετάζουσι, καὶ ἀπογραφὰς ποιῶσι καὶ τοὺς μαι καὶ λαλοῦσι, καὶ ἐς τὴν ἱππάδα, καὶ ἐς τὸ βουλευτικόν, τοὺς δὲ καὶ ἀπαλιψῶν, ὅπως αὐτοῖς δοξῇ. Id. 53. 17.

¹⁷ Quoque plures partem administrandæ Reip. caperent, nova officia excogitavit:— numerum prætorum auxit; exegit etiam, ut quoties consulatus sibi daretur, binos pro singulis collegas haberet: nec obtinuit, reclamantibus cunctis, fatis majestatem ejus imminui, quod honorem eum non solus, sed cum altero gereret. Suet. ib. 37.

Πρὸς δ' ἐτι καὶ καλῶς ἔχει, διὰ πλεονεξίαν πάντα τα τῇ ἀρχῇ προσσηκῶτα διαγινώδαι, ὅπως καὶ ὠφελῶνται ἀμὰ συχνοί, καὶ ἡμῶν τοῦ πρᾶγμα τῶν γινώται. ὅτι γὰρ οἱ τι ἀρχοῦντο πολλοὶ εὐνοῦσαι σοί, πολυμῆδη ἀπολαύειν τῶν κοπῶν ἀγαθῶν καρποῦμαι, καὶ σὺ ἀφθονοῦντα τοῖς αἰσ ἀρίστοις. πρὸς πάντα τα ἀναγκαιὰ χρῆσθαι. Dio Cass. 52. 25.

¹⁸ "Tribunitiam potestatem perpetuam. recepit: in qua semel atque iterum per singula lustra collegam sibi cooptavit." Suet. in Oët. 27. "Continuata per septem et triginta annos tribunitia potestas." Tac. Ann. 1. 9.

¹⁹ "Comitiorum pristinum jus reduxit." Suet. in Oët. 40. Thus Tiberius to the same effect; Οὐτι ἐν ταῖς διαγνώμας τῆν ἐξουσίαν τῆς διαψηφιστῶς κατελύειν, ἀλλὰ καὶ τῆν ἀσφαλείαν τῆς παρρησίας προστιδμεν. ἐκ τι τοῦ δήμου το δυσκρίτον ἐν ταῖς διαγνώμας ἐς τὴν τῶν δικαστηρίων ἀκρίβειαν μεταστήσας, το, τι ἀξίωμα τῶν ἀρχαίων αὐτῇ ἰστέρησι, καὶ ταῦτα το φιλοτιμῶν ἀντι τῇ φιλοποικῶν σφας ἐξῆταιδισσι. καὶ τῶν σπουδαίων αὐτῶν το πλοιομένην ἐκποψας, το εὐδοξόν αὐτοῖς ἀντιδμεν. Dio Cass. 56. 40.

form;

form⁴⁰; made many excellent regulations, and passed many liberal and salutary laws, which are still extant⁴¹; himself giving his vote, as one of the people⁴².

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It is true, that this indiscriminate accumulation of honors upon a single person was of a very impolitic and dangerous nature; and was, in fact, prostituted to many arbitrary and tyrannical uses by the succeeding emperors⁴³. But the steady and gentle hand of Octavius for a while averted these malignant effects. By being endued with a more direct ascendancy over his associates in office, he protected the people against the oppressions of the great and opulent, to which, for some preceding ages, they had been so fatally exposed.

Though in full possession of every degree of authority, to which his most ardent ambition could possibly aspire, he well knew that the pageantry of power was often more alarming than the exercise of it. He was, therefore, extremely delicate and modest in the use of titles, and could never be persuaded to assume any but such as were of a private and personal import; strenuously disclaiming all those that conveyed the least ideas of absolute sovereignty.

⁴⁰ "Quoties magistratum comitiis interesset, tribus cum candidatis suis circumibat, supplicabatque more solenni." Suet. in Oct. 56.

⁴¹ "Leges retractavit, et quasdam ex integro sanxit. Suet. in Oct. 34. Πως (ὃς αὐτὸς ἐπιλαδοῖτο) τὰ τε πλεονεκτήματα καὶ τῆς ἀπειθείας αἶμα τῶν νόμων, τῶν τοῖς μὴ ἀδικουμένοις αὐταρχικῶς παρὰ νόμον, τοῖς δ' ἀδικούσιν οὐκ ἀπαυδαῖν τιμωρίας ἔχοντων. Dio Cass. 56. 41.

⁴² "Ferebatque et ipse suffragium in tribubus, ut unus e populo." Suet. in Oct. 56.

⁴³ Thus the Greek historian, after an enumeration of many other abuses of the Imperial power, closes the whole with that of the tribuneship in particular; Ἡ τε ἐξουσία

ἡ δημοκρατικὴ καλουμένη, ἣν οἱ πάντες ἀνθρώποις ἐσχέον, δίδωσι σφίσι τὰ τε ἐπιγινώσκοντα ὑφ' ἑτέρων τινος, αἰ μὴ συνεπαίνοσι, πάντων, καὶ μὴ καθυβρίζονται· καὶ ἀρα τί καὶ το βραχυτάτοι μὴ ὅτι ἔργῳ ἀλλὰ καὶ λόγῳ ἀδικεῖσθαι δοξῶσι, καὶ ἀκριβοῦς τοῖς ποιήσασιν αὐτοῖς ὡς καὶ νύκτωρ ἀπαλλύσασθαι. δημοκρατίᾳ μὲν γὰρ, αἵ τε καὶ ἐς τοὺς ἐκπαλινοὺς πάντας τιλοῦνται, οὐκ ὅτιον νομίζουσιν εἶναι· τῇ δὲ δυνάμει τῇ τῶν δημοκρατῶν παύσει, ὅση περὶ τὰ μακρὰ ἐγγύς, προστιδίεται, καὶ δι' αὐτῆς καὶ ἡ ἐξαρθεύσεως τῶν ἐν τῇ ἀρχῇ αὐτῶν, ὡς καὶ κατ' ἐτος αὐτῇ μάλιστα τῶν αἰ δημοκρατῶν λαμβανούσιν, ἀρδύονται. ταῦτα μὲν ἐκ τῆς δημοκρατίας, ὡς πού καὶ ἐκαστα νομοθετοῦν, ὅπως μὴδὲ αὐτοῖς δοξῶσι τινος ἐχέειν δακνόν. Dio Cass. 53. 17.

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The office of Perpetual Dictator had been abolished by a consular edict, immediately upon the murder of Julius Cæsar; and the most dreadful penalties and execrations were fulminated against that person who should ever usurp, or even propose the future revival of it⁴⁴. This law, however, with all its severity, could not deter the sycophants of the times from pressing it with much earnestness upon Octavius; who, with equal wisdom and resolution, rejected this insidious compliment⁴⁵. When saluted likewise in the theatres, by the general acclamations of the people, with the name of *Lord*, he expressed every possible symptom of disgust at such indecent adulation; and, by a public edict, forbade the future application of that title to himself, even from his own family⁴⁶.

The chief object of his wishes, in the line of titular honors, was to obtain the appellation of *Romulus*, as the second founder of the empire. But that being too closely connected with *King*, a word still more terrible to the ears of the Romans, than the actual power was to their feelings⁴⁷, he prudently desisted from that pretension; contenting himself with the surname of *Augustus*, an epithet, which diffused a kind of mysterious sanctity over his person and character, without disturbing their minds with any formidable ideas of regal superiority⁴⁸. To this he added that of *Cæsar*, pursuant to

the

⁴⁴ Νομοὶ ἐπιθέντες (sc. Consules) μηδὲν αὐδὲ διατάττειν γινώσκειν· ἀλλὰ τὰ ποιησάμενοι, καὶ θανάτου προειπώσιν, ἂν τις ἐσχηγῆται τοῦτο, ἂν δ' ὑπογῇ, καὶ προσέτι καὶ χρηματὰ αὐτοῖς ἀντικατὰ ἐπιτιμῶνται. Dio Cass. 44. 51.

⁴⁵ "Dictaturam magna vi offerente populo, genu nixus, dejecta ab humeris toga, nudo pectore, deprecatus est." Suet. in Oct. 52.

⁴⁶ Domini appellationem, ut maledictum, semper exhorruit; dominumque se posthac appellari ne a liberis quidem aut nepotibus suis, vel serio vel joco passus est: atque hujusmodi blanditias etiam inter ipsos prohibuit. Suet.

in Oct. 53. Διοσκότης τι τότε ὁ Αὐγούστος ὑπὸ τῷ δήμῳ οἰομασθῆναι, οὐχ ὅπως ἀπαιτεῖ μὴδὲν ταῦτα πρὸς ἑαυτὸν τῷ προσρηματί χρῆσασθαι, ἀλλὰ καὶ πάντῃ διαφυλάττειν αὐτοῖς ποιεῖσθαι. 55. 12.

⁴⁷ Ὁ καὶ θαυμάζειν πρὸς τοὺς ἔργους τὰ τῷ βασιλευσίνι ὑπομνηστικὰ, τύποιμα τοῦ βασιλέως, ὡς καταλύει τῆς ἐλευθερίας, φησὶν. Plat. in Anti. p. 77.

⁴⁸ "Augusti cognomen assumpsit,—Munati Planci sententia: cum quibusdam censentibus, Romulum appellari oportere, quasi et ipsum conditorem urbis, prævallisset ut Augustus potius vocaretur, non tantum novo, sed etiam ampliore cog-

the will of his predecessor, to point out the family into which he had been adopted⁴⁹. The whole was crowned with the most endearing title of *Pater Patriæ*; not with any design of arming him with that stern and absolute power, which the rigor of the Roman law allowed in the system of domestic government; but as an admonition to him to treat his subjects as his children; and to his subjects, to respect and love him as their common parent⁵⁰: and this honorable mark of distinction he is said to have accepted with tears of joy⁵¹.

From the same cautious motives, which had uniformly actuated his whole conduct, he studiously avoided the idle clamors of popular applause; and not to lay too great a tax upon the affectionate

“nomine: quod loca quoque religiosa et
“in quibus augurato quid consecratur, augusta dicantur.” Suet. in Oct. 7. “Tractatum etiam in senatu, an quia condidisset imperium, Romulus vocaretur; sed sanctius et reverentius visum est nomen Augusti; ut scilicet jam tum, dum colit terras, ipso nomine et titulo, consecraretur.” Flor. 4. 12. Ο Καισαρ επιθυμῶν μὴ ισχυρῶς Γερμανῶς οἰμασθῆναι αἰσχυρῶς δὲ ὅτι ὑποπίπτει ἐκ τοῦ τῆς βασιλείας επιθυμῶν, σκεπτόμενος αὐτὸ ἀπεποιήσατο, ἀλλὰ Αὐγούστος, ὡς καὶ πλείον τι κατ’ ἀνθρώπου; ὡς, ἐπεκλήθη. παλαιὰ γὰρ τὰ εὐμήματα καὶ τὰ ἱερὰτα, αὐγούστα προσαγορεύονται, ἡ δὲ θυμὸς καὶ σιβασὼν αὐτῶν καὶ ἰλλυζήσεις πῶς ὅπως τὰς σιβασίαι, ἀπὸ τῶν σιβαζέσθαι, προσηκούσιν. Dio Cass. 53. 16.

“C. Cæsaris—cognomen—assumpsit—
“testamento majoris avunculi.” Suet. in Oct. 7. Ἡ γὰρ δὴ τῆς Καισαρος ἢ τῆς τῆς Αὐγούστου προσηκούσιν δύναμις μὴ ὑδαμῶν αὐτοῖς οἰκίαν προστιθεῖσι, δηλοῖ δ’ ἄλλως τὸ μὴ, τῆς τῆς γένους σφῆς διδοχῆς, τὸ δὲ, τῆς τῆς ἀξιώματος λαμπρότητας. Dio Cass. 53. 18.

⁴⁹ Καὶ ὅταν τῆς πατρὸς ἐπιθυμία ταχὺ μὴ καὶ ἐξουσίαν τινα αὐτοῖς, ἢ ποτὶ οἱ πατέρες ἐπὶ τοῖς παιδαῖς ἴσχωσιν, κατὰ πάντων ἡμῶν διδόντιν· οὐ μόνον καὶ ἐπὶ τούτῳ ἀρχὴν εὐεχέτο, ἀλλ’ ἐς τὴν τιμὴν τὴν καὶ

ἐς παραίτησιν, ἵνα αὐτοὶ τὴν τοῖς ἀρχομένοις, ὡς καὶ παιδαῖς ἀγαπῶσιν, καὶ αὐτοὶ σφῆς, ὡς καὶ πατέρες αἰδῶνται. Dio Cass. 53. 18.

⁵⁰ As this event redounds greatly to his honor, and is fully expressive of the sense entertained by the public of his true character, it deserves to be related, as it stands at length in the words of his biographer—

“Patris Patriæ cognomen universi repentino
“maximoque consensu detulerunt ei. Prima plebs, legatione Antium missa: dein
“quia non recipiebat, ineunti Romæ spectacula frequens et laureata: mox in curiæ
“senatus: neque decreto, neque acclamatione, sed per Valerium Messalam id mandantibus cunctis: Quod bonum, inquit, sanctumque sit tibi, domuique tuæ, Cæsar Auguste.
“*(sic enim nos perpetuam felicitatem reipublicæ et hæc huic precari existimamus)* senatus te
“consentient cum populo Romano consalutans
“PATRIBUS PATREM. Cui lacrymans
“respondit Augustus; his verbis (ipsa enim, sicut Messalæ, posui), *Compos factus votorum meorum, Patres conscripti, quid habeo aliud Deo immortali precari, quam ut hunc consensum vestrum ad ultimum vixæ faciat mihi præferre licent.*” Suet. in Oct. 58.

civility

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civility of the gazing multitude, his usual practice was, both to leave, and enter, the city by night⁵². During his residence there, he adopted the style of life and manners of an ordinary citizen, without departing from the dignity of the prince. Utterly averse from the severe and unsocial pride of Asiatic despotism, he received and returned the salutations of the lowest plebeians⁵³; such as were in distress he assisted with his private fortune; all legacies left to him by those who had children he generously restored to the family⁵⁴; and so warm an attachment did he shew to the interests of his particular friends, that he was at all times ready to aid them with advice, and would sometimes condescend to plead their causes in person⁵⁵. Thus did he easily secure the love and esteem of the people, by the irresistible attraction of politeness, affability, and benevolence⁵⁶.

But while he was thus rich to the world, he was poor to himself; and in the midst of an age, infamous for every extreme of luxury and effeminacy, stood forth a bright example of frugality and temperance⁵⁷. From a laudable zeal to suppress the prevailing

⁵² "Non temere urbe oppidove ullo egres-
⁵³ sus, aut quoquam ingressus est, nisi vespere
⁵⁴ aut noctu; ne quem officii causâ inquie-
⁵⁵ taret." Suet. in Oct. 53. Νυκτός ἐς τῆς
πύλιν ἐσιπορμόθη ἔκτ' ἡν καὶ αὐτὸς ἐς τὰς πόλιν
ἦεν, οἷς καὶ ἄλλοι ποὶ ἐκδημοῖν, καὶ ἀφορμαῖας
καὶ ἰσχυροῖν, ὁμοίως ποιοῖν, ἵνα μὴδὲ αὐτῶν οὐχέτι
ἦν. Dio Cass. 54. 25.—And again—ὅμως δὲ
δὴ μὴδ' ὅσον προτιμῶν ποὶ αὐτοῦ ἀπαιτῶν, ἢ καὶ
ἀπαιτῶν οἱ ἰσχυροῖν ταλαιπωρησάμενος. Id. 56.
41.

⁵³ "Promiscuis salutationibus admittebat
"et plebem" Suet. in Oct. 53.

⁵⁴ Πολλὰ μὲν καὶ ἐκ τῶν οἰκίῶν πολλοὺς χάρισαν-
θαι, καὶ δὲ τὰ καταλειφθέντα αὐτῷ ὑποτίνας αἰσῶν
ἔχοντων, αὐτοῖς ἐκείνους ἀποδοῦναι. Dio Cass. 56.
41.

⁵⁵ Of this the historian has left us the fol-
lowing very remarkable instance; Οὕτω γὰρ

ποὺ δημοκρατικῶς ἤξω ἵσται, ὅτι τινος τῶν συγγενῶν
μὲν πρὸς αὐτὸν συγγενήματος παρ' αὐτοῦ διαδίδως, το
μὲν πρὸς τὴν φίλῃ τινι, ὡς καὶ π. ἀσχολία καὶ συ-
μπῶν αὐτῷ κλυταῖ, ἔκτ' ἡν καὶ ἐκείνους οὐχέτι
ἦν, "ὅγν' ἡμῶν ἰσχυροῖν ἐπικουρίας χρῆται ἰσχυροῖν
"οὐκ ἄλλοι τινες αὐτ' ἡμῶν σοὶ ἐπιμῶν, ἀλλ'
"αὐτοῖς παλαιῶν προικιδυνοῦσα σοὶ," ἐς τὸ δια-
ταρῶν ἰσχυροῖν, καὶ συγγενῶν οἱ. Dio Cass.
55. 4.

⁵⁶ Ἐνπροσδοκῶν τε γὰρ πᾶσι οἰκίῶν καὶ ἐς χρῆ-
ματα πολλοὺς ἰσχυροῖν τοὺς τε φίλους ἰσχυροῖν ἰσχυροῖν
καὶ ταῖς παρρησιαῖς αὐτῶν ὑπερχαίρει. Dio Cass.
56. 43.

⁵⁷ Πῶς δ' αὖτε ὑπελαβότο ἀνδρὸς ἰδὲ μὲν πτωχῶν,
δημοσίων δὲ πλουσίων, καὶ πρὸς ἰσχυροῖν οἰκισ-
μῶν, πρὸς δὲ τοὺς ἄλλους ἀναλαττικῶν γινόμενον.
Dio Cass. 56. 41. Of this likewise various
other instances are recorded by Suet. in Oct.
73—78.

vanity

vanity and extravagance, he set reasonable limits to the enormous expences of family entertainments⁵³, which, for a few days of superstitious festivity, involved many honest and industrious citizens in years of poverty; and had almost extinguished that national temperance, hardness, and simplicity, which were the true basis of the grandeur and good fortune of antient Rome. The shews exhibited by the principal magistrates on their inauguration, were become a still more crying evil; having introduced a false spirit of emulation, not only destructive of all domestic œconomy, but encouraging a general dissipation and corruption of manners, from the highest orders to the lowest. Augustus, therefore, forbade them any longer to vie with each other in such ruinous and impolitic profusion. He prescribed the number of gladiators for each exhibition, which they were not allowed to exceed; and to relieve the prætors from part of these burdens, without entirely depriving the people of their favorite spectacles, he made an allowance towards them from the public treasury⁵⁴.

The malevolent tongue of detraction may represent these, and many other excellent regulations, as nothing more than a cheap sacrifice of vanity to prudence; or as an affected contempt of that pomp and splendor, which much oftener excite envy than insure power. But when the effects are good, candor forbids us to say that the motives were evil; especially as his whole conduct admits the presumption, that the arbitrary spirit of his policy was kept in due subjection by the moderation of his temper⁵⁵. Fond as he might be

⁵³ Called by the antients, "Cœnæ adjiciales." Plin. Nat. Hist. 10. 23.

⁵⁴ Τῶν συσσίτων τὰ μὲν παύλως κατέλυσε, τὰ δὲ πρὸς τὸ σωφρονιστικὸν ὀντισίμω καὶ τοῖς μὲν γράμμοις τὰς πανηγύρεας πᾶσας προσέταξε, ἐκ τῆς τοῦ δημοσίου δίδουσαι· τὶ αὐτοῖς ἐπέλυσε· καὶ προσέτιπεν μὴ εἰς ἐκείνας οἰκοῦν τινα πλεον τοῦ ἱεροῦ ἀναλυσκεῖν· μὴ δ' ἐπὶ λομαχίαν, μὴ ἄλλως· εἰ μὴ ἡ βουλὴ ψηφισαίῳ, μὴ τ' αὐτοῖς πλεονακίς ἢ δις ἐν ἑκάστῳ εἴη, μὴ τὴν πλεονακίαν εἰκοσι καὶ ἑκατὸν ἀνδρῶν ποιεῖν. Dio Cass.

54. 2. In this age the pontifical suppers were become proverbial: hence the expression of Horace;

"Mero—

"Pontificum potiore cœnis." Od. 2. 14.

⁵⁵ Thus says Tiberius of him, ὥσπερ τις ἀγαθὸς ἰατρός, σωμα νοσήκεος παραλαβὼν καὶ εἰς σαμῶος, ἀπέδωκε παύλα ὑμῖν ὕγια ποιήσας.—And a little further—ποῦ δὲ δύναται· ἂν τις τῆς Αὐτοῦ μεγαλοφροσύνης ἐφικέσθαι, ὅτις πᾶσας μὲν τὰς δυνάμεις

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be of absolute monarchy, he well knew that a brave military people were not to be reduced to a state of servile obedience, by the mere dint of superior force. To reconcile them to his government, it was necessary to humour their passions; to study their interest; to preserve the specious appearance of the antient commonwealth; and to amuse them with a notion of their own free agency, while they were really acting under his permission or connivance.

The ardor of republican independence had, indeed, been long upon the decline. The lower and weaker classes, severely harassed by a variety of petty aristocratical tyrants, were much more desirous of being revenged of their oppressors, than of being free themselves; of setting up some absolute potentate, who should have power to annihilate all the rest, than of a restoration of the popular government, which, in the present state of public affairs, was of too delicate and precarious a nature, to promise any durable enjoyment⁶¹. On these considerations, they were more eager to compliment Octavius with a total resignation of their liberties, than he was to accept of it.

But to shew himself deserving of this popular confidence, to soften the tremendous aspect of Imperial power, and to make all possible atonement for his former cruelties and oppressions, he abolished, by a public edict, all the acts of his own detestable triumvirate; and enacted many new laws, to preserve to his subjects the peaceable enjoyment of their private rights, under his own princely protection⁶².

ἰσχυρὸς ὅμως τῆλικαυτὰς ὥσας ἔχον, παρὰ δὲ τῶν χρημάτων ἀλυστὴν οὕτω πρατύνει, καὶ μὴ φοβούμενος τῶν, μὴδ' ἀποκτείνων, ἀλλ' ἐξ αὐτῶν πατρὶν συν- παιούτων μὲν ἀρχῶν οὐκ ἤξιον, ἀλλὰ καὶ τὰ ἄλλα καὶ τὰ ἴδια καὶ τὰ χρημάτων ἡ τοῦ μισοῦ ἡμῶν κατεδίδει. Dio Cass. 56. 39.

⁶¹ Ἡ μὲν οὖν πολιτεία οὕτω τότε ἦτορ, ὥστε τὸ βέλ- τιον καὶ ἑρὸς τὸ σωτηριώδεον μετασχηματίζετο, καὶ τῶν καὶ παταπατῶν ἀδύνατοι οἱ, δημοκρατικῶν- φρονεῖς αὐτοὺς σφάλλει. Dio Cass. 53. 19.

⁶² Ἐπειδὴ πολλὰ παρὰ καλὰ τὴν τῶν γαστρῶν, καὶ ἐν τοῖς πολέμοις, ἀλλὰ καὶ ἐν τῇ τοῦ Αἰλίου τῶν τε Λατῶν συνιστάσει, καὶ ἀνομίᾳ καὶ ἀδικίᾳ ἰσχυρῶς, πᾶσα αὐτὰ δ' ἰσὺς προγραμματικῶς κατελύει, ὅσον τῇ αὐτῇ αὐτοῦ ὑπάλειπε προσδοκίαν. Dio Cass. 53. 2.

“Sexto consulatu Cæsar Augustus, potentia securus, quæ triumviratu jufferat abolevit; deditque jura, quæ pace et principe uteremur.” Tac. Ann. 3. 28.

Having, by such acts of lenity and generosity, gained a firm seat in the hearts of the people, and insured the affections of the senate, he laid hold of this favorable opportunity to obtain a confirmation of the sovereignty by their universal consent⁶¹. To this purpose he made a long and studied harangue⁶⁴, wherein he apprized them of the “great force then in his hands, which would enable him “to retain it even against their consent⁶⁵; but not to keep them in “suspence, he determined to restore all to them again, and re- “establish the commonwealth; in hopes of convincing them, that “he was never actuated by the love of power, but only by a sense of “duty to the memory of his deceased parent, whose murder he “was bound to revenge; by an earnest desire of appeasing those “commotions wherewith the city had been so long disturbed⁶⁶, “and of restoring the national tranquillity; a consummation which “he had most ardently endeavoured to effect, from his earliest “appearance in public life⁶⁷.

“Though he had accepted many extraordinary honors and “privileges from their hands, yet he never aspired to any indul- “gences above others⁶⁸; he thought it but an act of justice to “leave them to the administration of their own affairs; it was

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⁶¹ Ευδοκίμων τι οὐ ἐπὶ τούτοις καὶ ἐπαινοῦμενος, ἐπιδυνοῦσι καὶ ἴτεται τινα μεγαλοψυχίαν διαδείξασθαι, ὅπως καὶ ἐκ τοῦ τοιοῦτου πολλοὶ τιμῶνται, καὶ παρ' ἰκόντων δὴ τῶν ἀνδρῶν τῇ μομαρχίᾳ βεβαιωσασθαι, τοῦ μὴ δοκῆν ἀκούσας αὐτοὺς βεβαιοῦσθαι. καὶ τούτου τοὺς μάλιστα ἐπὶ τῶν βουλευτῶν παρασκηνιασας, ἐς τὴν γερουσίαν ἰσηλθὼν, ἰβδόμοι ὑπάκουον, καὶ ἀσπῶν, &c. Dio Cass. 53. 2.

⁶⁴ This speech, or the substance of it, is preserved in Dio Cass. 53. 3—10.

⁶⁵ Ὅτι μὴ παρὶς μοι διαπαῖς ἀρχῆς ὦμαι, καὶ αἰὼς ὄραμι—τα τε γράττωκα ἀκμαζῶ μοι, καὶ ὑποισκαὶ ῥῆμη καὶ χρηματὰ ἐστὶ, καὶ συμμαχοί. Id. ib.

⁶⁶ Οὐ μύθοι καὶ ἐπὶ πλείον ὕμους ἐξηγεσθαι,—ἀλλὰ ἀφίημι τῶν ἀρχῶν ἅπασαν, καὶ ἀποδίδωμι ὕμῳ

πάντα ἁπλῶς—ἵνα καὶ ἐξ αὐτῶν τῶν ἐργῶν καταμαθῆτε τοῦδ', ὅτι οὐδ' ἀπ' ἀρχῆς δυναστείας τινος ἐπιδυνοῦσα, ἀλλ' οὕτως τῇ τε πατρὶ δυνάμει σφραγιθῆ τιμωρησά, καὶ τῇ πόλει ἐκ μεγάλων καὶ ἐκαλλήλων κακῶν ἐξέλυσθαι ἠδύλευσα. Id. ib.

⁶⁷ Ἐπὶ δὲ ἡμαρμυνη τις, ὡς εἰκεν, ἐς τοῦτο προσηγάγει ἡμᾶς, ὅτι καὶ ἐμοῦ, καὶ πατρὸς μου ἐστὶ τότε σῆλος, καὶ χρύσιον σχῆμα, καὶ σφίρας λαβὼν, μέχρι μὲν πού τα πρᾶγματὰ τῆς πατρὸς μου ἐπικουρίας ἐχρήξα, πάντα τε προδύμως καὶ ὅπως τῇ ηλικίᾳ ἐποίησα, καὶ πάντα εὐτυχῶς καὶ ὥστε τῇ δυνάμει κατεστράξα. Id. ib. 5.

⁶⁸ Οὐδὲν σιωπῆς ἐσθ' ὑπεροχῶν, οὐδ' ὑπὲρ τοὺς πολλοὺς, καὶ πλεονέκτης πολλὰς ψήφισματων ὕμῶν, εὐδὲα μὲν. Dio Cass. 53. 6.

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" for his own interest to be released from the fatigues of public
" business, and placed beyond the reach of envy and treachery;
" and much more for his glory, to renounce the pomp of Ma-
" jesty, and descend, of his own accord, from so conspicuous an
" eminence to a private and domestic station⁶⁹.

" He had not dwelt upon his own merits and services to the
" public, from any principle of vanity or ostentation; but only to
" assure them, that he esteemed it his greatest glory to make a vo-
" luntary resignation of that power, which all others take the pains
" to acquire by force of arms⁷⁰.

" The antient Roman spirit was not expired with the Ho-
" ratii, and other heroes of antiquity: neither was he so indif-
" ferent to the public welfare, or so resolved at all events to shake
" off the load, as to resign it into the hands of unfit and unworthy
" men; much less to the populace at large (from whom not only no
" good, but the most pernicious mischiefs had always proceeded);
" but he should intrust it to their care alone, who were so eminently
" distinguished for their wisdom and virtue⁷¹. With regard to
" himself, he was worn out with toil and afflictions; and it
" was better for him to live privately with honor, than to rule
" the empire in the midst of danger; and it would be more bene-
" ficial to have the government administered by their common con-

⁶⁹ Εγώ γὰρ, αἰ τι το δίκαιον τις ἐξέλκῃ, δικαιο-
τάτος εἶναι νομίζω, το τὰ ὑμέτερά ὑμᾶς διακίῃ· αἰ τι
καὶ το συμφέρον, συμφερέτατον ἦν οὐμαι καὶ ἔμοι, το
μητι πραγματὰ ἔχειν, μητι φθορισθῆναι, μητι ἐπιβου-
λευθῆναι· καὶ ὑμῖν, το μετ' εὐνιδρίας καὶ σωφρονίας
καὶ φιλικῶς πολιτευθῆναι· αἰ τι καὶ το ευκλείας.—
πῶς μὴ οὐκ εὐδοξοτάτος μοι εἶναι, τῆλικαυτῆς ἀρχῆς
ἀφισθῆναι; πῶς δ' οὐκ ευκλείας εἶναι, ἐκ τοσούτου ἡγεμο-
νίας οἴκου, ἐδιδούῃ ἰδιωτευσθῆναι; Id. ib.

⁷⁰ Λέγω δὲ ταῦτα οὐκ ἄλλως ἐπινοήσαντες, — ἀλλ'
ὅτι ἰδὲ, ὅτι πολλῶν καὶ μεγάλων ἐς τι το κοινὸν ευε-
ργητημάτων, καὶ ἐς τὰ οἴκῳ σπουδαίων ἡμῖν οἴων,

ἐπὶ τοῦτο μάλιστα ἀγαλλομένη, ὅτι αἰ ἱεροὶ καὶ
βιαζόμενοι τινες ἐπιθυμοῦσι, ταυτ' ἡμῶς οὐδ' ἀναγ-
καζόμενοι προΐεμεθα. Id. ib. 7.

⁷¹ Μὴ γὰρ τοι νομίσῃ τις ὑμῶν, τοὺς μὲν παλαι-
ῶν Ῥωμαίων καὶ ἀρίστων καὶ εὐδοξίας ἐφισθῆναι, οὐ τι
ἐξίτηλοι ἐν τῇ πόλει καὶ το ἀνδράσι γεγονέναι, μὴ μὴ-
τοί μὴδ' ὑποκτείνῃ ὅτι προσθῆναι τι ὑμᾶς, καὶ ποτὶς
τισιν ἀνδράσι ἐπιτρέψαι, ἢ καὶ οὐλοκρατῆναι τινι (ἐξ ἧς
οὐ μόνον οὐδὲν χρηστὸν, ἀλλὰ καὶ πάντα τὰ διανοήσας
αἰ πᾶσι ἀνδράσι γιγνέσθαι) ἐκδοῦναι βουλομαι. ὑμῖν
γὰρ, ὑμῖν τοῖς ἀρίστοις καὶ φρονηματέροις, πάντα τὰ
πάντα ἀνατίθημι. Id. ib. 8.

" sent,

“ sent, than to have it depend upon the arbitrary direction of any single person ⁷².”

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He then earnestly intreated them “ to assent to his proposal, as he was determined, not only not to exercise any sovereign authority himself, but readily to obey the lawful commands of others⁷³: wishing rather to end his days in a peaceful retirement before his destined time, than to reign even in a state of immortality⁷⁴. He therefore restored to them their arms, provinces, revenues, and laws; only with this advice, neither to despair of being able to discharge the duties of government, from a fear of their difficulties; nor to hold them in contempt, from an idea of their being too easy⁷⁵.”

He concluded with exhorting them “ to adhere to the established laws, and not wantonly to admit of innovations⁷⁶: to intrust the government of the provinces, whether in peace or war, to the most virtuous and prudent; not contending who should derive the greatest benefit from their appointments; but how the tranquillity and felicity of the state should be best promoted⁷⁷. Neither to insult nor plunder their allies and subjects;

⁷² Αυτοὶ τε γὰρ καὶ σκεπτομένη καὶ τιλαλαμπωρή-
μαι, καὶ οὐκ ἐπὶ τῇ ψυχῇ οὐδὲ τῷ σώματι ἀντι-
χεῖν δύναται. καὶ προσεῖπεν καὶ τοὺς φόβους καὶ τοὺς
μισοὺς, ἃ καὶ πρὸς τοὺς ἀρίστους ἀνδράς ἐγγιγνίσκει τισί,
τάς τε ἐξ αὐτῶν ἐπιβουλὰς, προσορμαινέτω καὶ διαταύλα
καὶ ἰδιωτεύουσι· μάλλον ἐκκλησίᾳ, ἢ μοναρχήσας ἐπι-
κινδυνεύουσιν, αἰρουμένη· καὶ τὰ κοινὰ κοινῶς αὐτοῖς πολὺ
βελτίονα εἶναι καὶ ὑπὸ πολλῶν αἵμα διαγομένην, καὶ μὴ
ἐν ἑνὶ ἀνθρώπῳ, διοικεῖται. Id. ib.

⁷³ Δι' οὗν ταύτα καὶ ἐκείνῳ καὶ διομαι παύσειν
ὑμῶν, ὁμοίως καὶ συνεπαύεσθαι καὶ συμπροθυμηθῆναι
μοι, λογιζομένου παύειν ὅσα καὶ πεπολιμμένα ὑπὲρ
ὑμῶν, καὶ πεπολιτισμένα· καὶ τούτῳ πάσαι μοι τῆς
ὑπὲρ αὐτῶν χάρις ἀποδοθήσεται, ἐν τῇ συγχωρησά μοι ἐν-
ήσυχίᾳ πᾶσι καλεσθῆναι· ἵνα καὶ ἐκεῖνο ἰδῇτε, ὅτι
οὐ μόνον ἀρχῶν, ἀλλὰ καὶ ἀρχοῦν ἐπιταγῆναι, καὶ παύειν
ὅσα ἄλλοις ἐπιτάξαι, καὶ αὐτὸς ἀνεπιταχθῆναι δύνα-
μαι. Id. ib. 9.

⁷⁴ Καὶ πᾶσι ἰσοιμῶς καὶ πρὸ τοῦ ἡμαρτῆ μου

χρόνου τελευτῆσαι μάλλον, ἰδιωτεύουσας, ἢ καὶ ἀδανάτορας
μοναρχήσας γινώσκειν, αἰρουμένη. Id. ib.

⁷⁵ Ἀποδοῦναι ὑμῖν καὶ τὰ ὅπλα καὶ τὰ εἶδη, τὰς
τε προσόδους καὶ τοὺς νόμους· τοσαῦτοι μοι οὐκ ἐπιπᾶσι
ἵνα μὴ τοῦ μεγέθους ἢ καὶ τοῦ δυσμειλαχίμῳ τῶν
παραγγελλῶν φοβηθῆμις, ἀδυνάμῳ, μὴ αὐτὸν καλεσθῶ-
ντος αὐτῶν, ὡς καὶ ῥᾶδιως διοικεῖσθαι δυναμένων,
ἀμειλήσῃ. Id. ib.

⁷⁶ Πρῶτον μὲν τοὺς κείμενους νόμους ἰσχυρῶς φυ-
λάττειν, καὶ μηδεὶς αὐτῶν μεταβαλεῖν. τὰ γὰρ ἐν
ταύτῃ μενοῖα, καὶ χίρῳ ἢ συμφορῶντερά τινι αὐτῶν
κατασφραγισθῶντι, καὶ βέλτιον εἶναι δοκῇ, ἔστιν. Id. ib.
10.

⁷⁷ Τὰς τε ἀρχὰς καὶ τὰς εἰρηκὰς καὶ τὰς πο-
λεμικὰς τοῖς αὐτοῖς ἀρίστοις τε καὶ ἐμπροσθεστοῖς ἐπιτρέ-
πει, μὴ φοβουμένης τισί, μὴδ' ὑπὲρ τοῦ τοῦ δέοντος
τοῖς δέοντος πλεονεκτεῖν τι, ἀλλ' ὑπὲρ τοῦ τοῦ σωλὸς
καὶ σφίσι καὶ εὐπραγίᾳ φιλοδιμουμένη. Id.
ib.

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“ nor to injure or fear their enemies; to have their arms always in their hands, but not to use them either against each other, or those in peace with them.” By a strict adherence to such rules, they would be both happy themselves, and shew their gratitude to him, who had raised them from a state of sedition and anarchy, to their present prosperity. But if they neglected this advice, they would cause him to repent of his condescension, and once more involve their country in war and perils.”

Had this exhortation been as much distinguished by sincerity, as good sense, it might have passed for one of the noblest lessons of morality and policy, that the most pure and virtuous patriot could have given to his free and happy subjects; but, on the contrary, it was a much better proof of the solidity of his understanding, than of the integrity of his heart: and the whole has generally been represented as a subtle artifice; merely to feel the pulse of the senators, and to try their attachment to his person and government.

This singular oration produced a great diversity of effects upon the minds of the audience. The few that were in the secret, warmly seconded his motion; some suspected his design; others believed him in earnest; the whole assembly was astonished, some admiring his address, some his propositions; while others expressed their dissatisfaction at this change of his sentiments: there being still many who detested a popular government, and were perfectly contented under that of Cæsar⁷⁸. The result of the whole was, that, being

⁷⁸ Τους μιν συμμαχους και τοις ὑπηκοοις μητι ὀφριζει, μητε εκχημαλίζουσι, τους δε πολεμιους μητ' αδικητε, μητε φοβουσι. τα μιν ὅπλα εν ταις χερσιν αι εχθροι μη μιν μοι μητε κατ' αλληλων, μητε κατ' α των ερηνουτων αυτοις χρησθαι. Id. ib.

⁷⁹ Ει ουκ ετι τουτο ειπων, παυσομαι· ὅτι αι μιν εὖ με πολιτευουσι, αυτοι τε ευδαιμονουσι, και εμοι χαριουσι, ὅτις ὑμας τασιαζομαι κακως λαβων, τοι-

ουτους απειδωκα· αν δ' αδιατησθαι και ὅτιον πρα- ξαι αυτων, εμε μιν μελανοσσαι ποιησιν, την δε δε πολιν εις τι πολεμους πολλους και εις κινδυνους μεγάλους αυτις εμβαλεει. Id. ib.

⁸⁰ Τοιαυτα του Καισαρος αναλογησας, ποικιλον το παθος τους βουλευτας κατελαμβανει. ολιγοι μιν γαρ την διαποιαν αυτου ηδισαν, κακ' τουτου και στυγο- πνευαζειν αυτη· τωι δ' αλλων δι' εμε ὑπερβινον τα λεγο- μιν,

being all unwilling, from various motives, to speak the real sentiments of their hearts they joined in one unanimous supplication, that he would resume the government; to which he yielded with much seeming reluctance, and by this subtle artifice secured himself in the throne for the remainder of his life".

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Though Augustus (as he should now be called) had been thus confirmed in the monarchy by a too mean and unbecoming dissimulation, yet, in justice be it acknowledged, he neglected no means of preserving his popularity, and of meriting the favors so lavishly conferred upon him. In the public business of his ministry he was attentive and indefatigable; sparing in the exercise of sovereign power; committing the care of the richest and most peaceable provinces to the senate; and taking to his own department those only that were the most warlike and turbulent. This likewise answered a double purpose. By leaving the senators in free possession of their luxurious and peaceable governments, he gradually enervated their minds, and destroyed their appetite for war and enterprize; while he was himself constantly provided with a brave and numerous army, daily inured to fatigue, and practised in every kind of military operations".

μῖνα δὲ δι' ἐπιστῶν σφισι, καὶ διὰ ταῦτα καὶ ἰδαν-
μαζον ὁμοίως ἀμφοτέροι, οἱ μὲν τὴν περιτεχίαν αὐτοῦ,
οἱ δὲ τὴν γυνῆν· καὶ ἡχθοντο οἱ μὲν τὴν πραγματείαν
αὐτοῦ, οἱ δὲ τὴν μεταβολήν. τοῦ, τὴν γὰρ δημοκρατικῶν
ἡδὴ τῆς, ὡς καὶ γαστρίδας, ἰμῶν, καὶ τὴν μεταβολήν
τῆς πολιτικῆς προσκοίτης, τῇ τὴν Καίσαρι ἐχθροῦ. Id.
ib. 11.

²¹ Πολλὰ μὲν καὶ μεταξὺ ἀναγινωσκόντος αὐτοῦ
διέβουν, πολλὰ δὲ καὶ μετὰ τοῦτο, μοιραχισθῆναι τὴν
ἡγεμονίαν, καὶ πάντα τὰ ἐκ τοῦτο φερόντα ἐπιλεγοντί·
μῆχρ' οὐ κατηναγκάσαντο αὐτὸν ἀνταρχεισθαι. Id. ib.

²² Τῇ μὲν οὐκ ἡγεμονίᾳ τούτῳ τῷ τρόπῳ καὶ παρὰ
τῆς γερουσίας τοῦ τὴν δημοῦ ἐξουσιάζοντο. βουλευτικῆς δὲ
δὴ καὶ ὡς δημοτικῆς τῆς καὶ δοξαί, τῇ μὲν φροντίδι

τῇ τὴν προστάσει των κοινῶν πασαν, ὡς καὶ ἐπιμελείας
τῶν διοικούντων, ὑπεδέξατο· οὗτοι δὲ παλιν αὐτὸς τῶν
ἐδῶν ἀρχῶν, οὐδ' ὅσον αὐτὸν ἀρξῆναι, διαπαῖς τοῦτο
ποιεῖσθαι εἶπεν· ἀλλὰ τὰ μὲν ἀσθενέστερα, ὡς καὶ ἐρη-
νικὰ καὶ ἀπολέμα, ἀπέδωκε τῇ βουλῇ τὰ δ' ἰσχυρο-
τέρα, ὡς καὶ σφαλερὰ καὶ ἐπιεικῆ, καὶ πῶς πο-
λεμικοῦς τινας προσκοίτους ἐχθροῦ, ἢ καὶ αὐτὰ κατ'
ἰαυτὰ μὲν τι πῶς ἴσως δύναμιν, καὶ ἡσυχίαν· λόγῳ μὲν,
ὅπως ἢ μὲν γερουσία ἀδῶς τὰ καλλίστα τῆς ἀρχῆς
καρπῆτο, αὐτὸς δὲ τοὺς τὴν πολεμῶν καὶ τοὺς κινδυνῶν
ἐχθροῦ ἐργῶν δὲ, ἵνα ἐπὶ τῇ προφασί τούτῳ κινῶν μὲν
καὶ ἀσπλῶν καὶ ἀμαχοῦ ὥσιν, αὐτὸς δὲ δὴ μοῖρος καὶ
ὅπλα ἐχθρῶν καὶ τραυμάτων τρέφῃ. Id. ib. 12.

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To repel the envy that would naturally arise from the idea of a perpetuity of power, and, at the same time, to express his dependence upon the good-will of the public, from whom he professed to hold it, he limited the duration to ten years; making it a constant practice to abdicate his command at the end of every succeeding decennial term, and to resume it, with the like affected unwillingness⁸³. A similar ceremony was likewise observed by all his successors for several ages; who, though they considered themselves as sovereigns for life, always celebrated every tenth year with feasting and other solemnities, in token of a renovation of their power⁸⁴.

Thus was the Roman constitution become an entire monarchy, though others were occasionally joined with the emperor in the administration⁸⁵; and in this state it continued, till it expired, many centuries afterwards, by its own weakness and imperfections. Whether Augustus ever had it in view to make any alterations in the political system, or to establish any future course of succession, is quite uncertain: though one instance, not many years after, seemed to favor the supposition, that he really intended to restore the people to their liberty.

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On his entrance upon his eleventh consulship he was attacked by a severe, and, as at first apprehended, an irrecoverable, illness. The senators and magistrates being, on that occasion, assembled round

⁸³ Της γουν δυνατεας εξελθουσας, αλλα στη παρτι, οτα παρτι, και μετα τουτο δικα, και ιτερα αυδης δικα, συμπαλκας αυτη πληροδη' οτι τητην δυνατεια διαδοχη δε βιν αυτω μοναρχησαι. Dio Cass. 53. 16.

Πληρωδουσης δε ει και της τριτης δυνατεας, τη ηγμονια και το τιταρτου, εκδομους δεδω, υπεδεξατο. Id. 55. 12.

Thus Tiberius; εξ ου δη πολο μαλλον αυτω πικραδωτης, και δυτερον αυδης και τριτον, τιταρτου τι και συμπαλον, εξελθιασαςδε αυτου εν τη των κομνη διαχειριστι ιμμιναι. Id. 56. 39.

⁸⁴ Και δια τουτο και δε μετα ταυτα αυτοκρατορικ, καιτοι μικραις ει τακτον χρονον, αλλ' ει παντα παδαπαξ τοι βιοι αποδωκομενοι, ημας δια των δικα και ιτων ιωρτασαι, ως και της ηγμονιας αυδης τοτε αναπημιοι' και τουτο και νυν γιγνεται. Id. 53. 16. i. e. to the reign of Alexander Severus.

⁸⁵ 'Ουτω μιν δη το, τι του δημου και το της γερουσιας κρατος και ει του Αυγουστου μετιστη, και απ' αυτου και ακριβης μοναρχια κατιστη. μοναρχια γαρ, ει και τα μαλιστα και δυο και τρεις αιμα το κυρος ποτε ισχον, αληθετατα αν νομιζοιτο. Id. 53. 17.

his bed, expecting him to declare Marcellus his successor, he appointed no one; but only delivered his book, wherein was preserved an account of the army and revenue, to his colleague Piso; and gave his ring to Agrippa⁸⁶. But being afterwards restored to health, he desired leave, on his first appearance in the senate, to lay his will before them; to shew that he had declined nominating any one to succeed him in the empire. They gave him credit, however, upon his own word⁸⁷; and being satisfied with his declarations, made at a time when he could have had no interest in deceiving them, expressed their joy at his recovery by every possible token of affection and attachment; voted him new honors; and much enlarged the bounds of his Imperial prerogatives⁸⁸.

Being now at the summit of his ambition, and in the vigor of his life, he made the glory of the empire his own⁸⁹. Not that he conceived it to consist so much in the multitude of cities gained, and kingdoms subdued, by a violation of all duties both moral and religious; as in moderating that spirit of enterprize and false heroism, which, for so many preceding ages, had kept the whole world in a perpetual ferment. He wished rather to secure what they had already gotten, than to acquire more: to teach them, that a well-compacted dominion, regulated by wholesome laws, defined by just and determined limits⁹⁰, and kept within the view of the

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⁸⁶ Ὁ δὲ Αὐγούστου, ἰδιόκαλον μίλα Καλαυρούριον Πισωνος ἀρξας, πρῶτον αὐτῷ, ὡς μνηστῆρι εὐπιδάσκαλῳ, παρὰ τῶν ὡς καὶ τιμωμένων διδόν, καὶ τὰς γὰρ ἀρχὰς, τοὺς τε, ἄλλους τοὺς πρῶτους καὶ τῶν βουλευτῶν καὶ τῶν ἱπποκρίτων ἀδελφῶν, διαδοχῶν μὴ οὐδὲν ἀπιδύξαι, καὶ τοὺς τοὺς Μαρκέλλου παρὰ τὴν ἀποκρίσιν αὐτῶν εἰς τὸν τοὺς ἀποδοκῶν διὰ λαχθῶν δὲ τινὰ αὐτοῖς περὶ τοὺς δημοσίων πραγμάτων, τῷ μὴ Πισῶν τὰς τε δυνάμεις καὶ τὰς προσόδους τὰς κοινὰς εἰς βιβλίον, ὡς ἑκάστης ἰδίᾳ, τῷ δ' Αὐγούστῳ τοὺς δακτύλους ἐνχειρίσει. Dio Cass. 53. 30.

⁸⁷ Τότε δὲ οὐδὲν, τὰς διαθήκας ἰσχυρῶς μὴ εἰς τοὺς συνέδρους, καὶ ἀναλίσσασθαι πρὸς τὴν, ὑποκρίνεται

τοὺς ἀνδρῶν τοὺς ὅτι οὐδὲν τῆς ἀρχῆς διαδοχῶν καταλείπων καὶ οὐ μίλοι καὶ στήν' οὐδὲν γὰρ ἐπὶ τριπλῶν. Id. ib. 31.

⁸⁸ These are enumerated at length, id. ib. 32.

⁸⁹ "Nulla in præsens formidine, dum Augustus ætate validus, seque et domum et pacem sustentavit." Tac. Ann. 1. 4.

⁹⁰ "Mare oceanum, aut omnibus longinquis septum imperium: regiones, provincias, classes, cuncta inter se connexa." Tac. Ann. 1. 9.

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ruling power, was much more honorable to the prince, and beneficial to the people, than a romantic pretension to the supremacy of the globe, held under the precarious tenure of the sword, and supported only by terror and violence. Though he certainly waged many wars, and brought many foreign nations into subjection, yet they were, generally speaking, rather the antient rivals of the empire, than any new ones fought out by himself. For his own part, he seems to have set but very little value upon military fame; and was so tender of disturbing the peace of his neighbours, that he is said never to have undertaken a war, but upon very just and urgent causes; and was better pleased to make sure of their obedience, by the more merciful and bloodless obligations of oaths and hostages⁹¹. Thus he gained, in fact, more victories by his humanity, than by the sword; and, by convincing his enemies that it was their own interest to acknowledge his power, became "lord of the willing world."

This pacific disposition had so fully occupied the mind of Augustus, that the temple of Janus was shut once oftener in his reign, than it had been quite from the age of Romulus⁹². In consequence of this universal cessation of hostilities, he was left at full leisure to attend to the civil concerns of the empire; to take a general survey of his subjects, with an account of the public revenues; and to issue that celebrated decree, "That all the world should be taxed⁹³." By this act of

⁹¹ "Alias nationes male quietas ad obsequium redegit. Nec ulli genti sine justis et necessariis causis bellum intulit. Tantumque abfuit a cupiditate quoquo modo imperium vel bellicam gloriam augendi, ut quorundam barbarorum principes in æde Martis Ultoris jurare cogerit, mansuros se in fide ac pace quam peterent: a quibusdam vero novum genus obsidum foeminas exigere tentaverit: quod negligere marium pignora sentiebat. Et tamen potestatem semper omnibus fecit, quoties

"vellent, obsides recipiendi." Suet. in Oct. 21.

⁹² "Janum Quirinum semel atque iterum a condita urbe memoriam ante suam clausum, in multo breviori tempore spatium, terra marique pace parta, ter clausit." Suet. in Oct. 22. Πλιντος δ' ὁμῶς ὑπερ παλαιὰ τὰ ψηφισθῆναι οἱ ὑπερησθῆναι, ὅτι τὰς τε πυλάς τὰς τοῦ Ιανου, ὡς καὶ παλαιοὶ σφισι τῶν πολέμων ἐπικαυμάτων αὐτοῖς, ἐκλείσαν. Dio Cass. 51. 20.

⁹³ Luke iii. 1.

sovereign

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It has been the fate of this prince, in common with many others in the same exalted station, to be transmitted to posterity in two opposite views⁹⁶; both of which being too much disguised by false colors, it is as difficult to cleanse him from the dark stains of calumny, as from the gaudy smear of adulation. It would be needless to repeat what has so often been urged on each side, upon so interesting and popular a topic; suffice it, therefore, to indulge our curiosity with a few observations upon one particular part of this celebrated character, which has been the subject of more general censure; and for which his conduct too often supplied occasion.

As we are not now attempting to draw the spotless portrait of a patriot king, a prodigy which never existed, unless in the reveries of visionary politicians, we are not concerned about what he ought to have been, but to represent him as he actually was. If, by throwing a shade over those defects, where it can be introduced with propriety, we can soften their harsh appearance; if by accounting for some dubious instances of his behaviour, upon principles that are less disgraceful to the human heart, there may be a chance of approaching nearer to the real truth; we shall then enjoy the pleasing opportunity of doing some little justice to the memory of a very eminent personage; who, with all his blemishes, was both an ornament and blessing to his country.

All his defamers, whether antient or modern, seem, as it were, to have been angry with him, for ceasing to be a tyrant, because he undoubtedly was such, when he first presumed to place himself at the

speaking of their having repeatedly obliged Augustus to re-assume the reins of government, he adds, *Και μάλα ικότης. τίς μιν γὰρ οὐκ αἰ ἱλοῖτο ἀπαραγμοῖς σὺλξοδαι, καὶ ἀκινδύνως ἰσθαι-μοῖσι, καὶ τῶν μὲν ἀγαθῶν τῶν τῆς πολιτείας ἀφθονίᾳς ἀπολαύειν, ταῖς δὲ δὴ φροντισὶ ταῖς ὑπὲρ αὐτῆς μὴ στυνναι; τίς ὅτι αἱ ἀμεινοὶ τοῦ Αὐγούστου τῆς ἰδίας μοῆς,*

μητοὶ γὰρ καὶ ἀλλοὶ ἀνδραγαθὸν τοσοῦτον, ἡρξεν; Dio Cass. 56. 40.

⁹⁵ "Apud prudentes, vita ejus varie ex-
"tollebatur, arguebaturve." Tac. Ann. 1.
9. Their sentiments are to be found at large
in the same passage.

head

head of the commonwealth; striving to make us believe, that a profound hypocrisy predominated through the very best of his actions⁹⁷; as if a man who had been once bad could not possibly reform; and every token of repentance for past misconduct were only to add one more vice to his former number.

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That Augustus wanted that greatness of mind, that fearless openness of heart, which were the peculiar characteristics of Julius Cæsar, may be admitted, without being imputed as a crime. The complexion of the soul, in its original formation, is no more within a man's own power, than the complexion of his countenance. Both, indeed, may be improved by labor and cultivation; but, in consequence of certain natural defects, cannot, with all the art of man, be heightened into absolute perfection.

Allowing him, therefore, to have been inferior in these natural endowments, it was, at worst, only his misfortune. But had he been possessed of them in a still more exalted degree, the very temper of the times would have prevented him from exerting them in their full latitude. Surrounded as he was with a miscellaneous multitude, it behoved him to study their dispositions, and to watch their motions, in order to guard against the machinations, either of open enemies, or treacherous friends. The instance of his illustrious ancestor, still bleeding before his eyes, who had himself fallen a victim to his too great contempt of suspicion, admonished him to beware of the concealed dagger, to stifle his resentment, and look with complacency, even upon his suspected assassin.

This constant reserve and circumspection, therefore, was the natural consequence of that perilous eminence whereon he stood; without implying the least malicious design against the peace and liberties of his country. On the contrary, if actions speak the

⁹⁷ "Pietatem erga parentem, et tempore reipublicæ, obtentui sumpta." Tac. Ann. i. 10.

man,

man, we shall be well justified in affirming, that, tyrannically as he began his career, the virtues of the Prince were a reasonable atonement for the vices of the Triumvir. When once disengaged from his pernicious connexions with his abandoned associates⁹³, and in quiet possession of an imperial throne, his life was tainted with fewer gross blemishes, than generally fall to the lot of those, whom Providence has been pleased to intrust with any portion of sovereign authority.

A course of near forty years indefatigably employed in the faithful administration of justice; in preserving an immense dominion in a general state of union and tranquillity; in cultivating the arts of peace; in improving the comforts and elegancies of domestic life; and in the exercise of every other benevolent and patriotic virtue; clearly displays the real complexion of the heart, and loudly calls upon all mankind to give it full credit for sincerity.

If to accomplish these beneficial and noble purposes; if, the more effectually to govern a seditious people, long used to all the wildness of licentiousness, he found it necessary, on occasion, to study their inclinations, to temporize with their humors, to restrain or conceal his own love of absolute power, and to alleviate the weight of the yoke, that they might all bear it with greater cheerfulness; these are no other than the laudable artifices of the most consummate wisdom; such as the soundest policy need not blush to avow, nor the mildest government to practice. To stigmatize such behaviour with the odious names of hypocrisy or cowardice, is not only a violation of the first principles of common charity; but it is (what the great satirist knew to be too deeply rooted in the nature of man)

⁹³ "Multa Antonio, ut interfectores pa- " per libidines pessum datus sit: non aliud
" tris ulcisceretur, multa Lepido concef- " discordantis patriæ remedium fuisse, quam
" fisse. Postquam hic socordia senuerit, ille " ut ab uno regeretur." Tac. Ann. 1.9.

a malicious joy in misconstruing and inverting the moral qualities of human actions⁹⁹.

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But had the heart of this illustrious prince been so truly corrupt, we should never have seen the pen of his professed encomiast glowing with such rapturous praises of political liberty; nor the most firm and stubborn champion of it that Rome ever beheld, the avowed and irreconcilable enemy of the whole blood of the Cæsars, drawn under that most sublime and majestic of all characters, the giver of laws to the blessed spirits in Elysium¹⁰⁰. Much less should we have heard the inhuman Mezentius so warmly imprecating those calamities, which had undeservedly fallen upon his innocent and amiable son Lausus; and pathetically confessing the justice of those punishments, which he then suffered from the well-grounded resentment of his much injured people¹⁰¹. This is too bold and dangerous a language for a poet to echo in the ears of a tyrant; had Augustus, therefore, actually merited that approbrious name, where *now* would have been the works of Virgil? He who rescued his memory from oblivion, and gave immortality to his muse, contrary

⁹⁹ "At nos virtutes ipsas invertimus, atque
"Sincerum cupimus vas incrustare. —"

—————"Hic fugit omnes

"Infidias, nulloque malo caput obdit oper-
"tum;

"(Cum genus hoc inter vitæ versamur, ubi
"acris

"Invidia, atque vigent ubi crimina) pro bene
"fano

"Ac non incauto, fictum astutumque voca-
"mus." Hor. Sat. 1. 3. 55, &c.

Observations, which apply so very closely to the case before us, that one would almost imagine them introduced by this ingenious satirist, as an oblique answer to some malevolent aspersions, which might have been

thrown out against the character of his princely patron.

¹⁰⁰ "Secretosque pios, his dantem jura
"Catonem." Virg. Æn. 8. 670

¹⁰¹ "Idem ego, nate, tuum maculavi cri-
"mine nomen;

"Pulsus ob invidiam folio sceptrisque pa-
"ternis,

"Debueram patriæ poenas; odiisque meo-
"rum

"Omnes per mortes animam fontem ipse
"dedissem." Æn. 10. 851, &c.

A confession likewise which, in a manner, he repeats with his dying breath;

"Scio acerba meorum

"Circumstare odia." Ib. v. 904.

to the express will of the too modest author, must not only have admired his genius, but have applauded his principles.

The prince, therefore, who at once professes himself a friend to learning, and an enemy to liberty; who strives to enlighten the understanding of his subjects, only to make them more sensible of their own wretchedness; is a monster, which human nature, pregnant as she is with contradictions, has very rarely exhibited to the eye of the world. It is the blessed property of the liberal arts, to mollify the rudeness of the manners, and to calm the natural ferocity of the passions. The rank and poisonous weeds of slavery will shrink and wither away, when overshadowed by the luxuriant and fertile branches of sound literature.

The court of Augustus was the true seat of politeness and humanity; and was adorned with the brightest constellation of genuine wits, that ever shone at the same instant in any age or country, from the beginning of time. In this sacred asylum, every science that could harmonize the mind, or improve the heart, was sure of being embraced with the most cordial affection. Inspired, himself, by a mature education, with the warmest zeal for every kind of ingenuous and useful knowledge¹⁰², he neither wanted judgment to discern real abilities in others, nor generosity to reward them. To preside in the assemblies of the poets, orators, historians, and philosophers, to submit his own productions to their candid and friendly criticisms, were among the most favorite amusements of his leisure hours; and while he listened with attentive pleasure to the rehearsals of their elegant compositions, his smiles gave life to genius, and wings

¹⁰² "Eloquentiam studiaque liberalia ab ætate prima cupide et laboriosissime exercuit." Suet. in Aug. 84. "Multa varii generis prosa oratione composuit, ex quibus nonnulla in cœtu familiarium, velut in auditorio, recitavit." Ib. 85.

to emulation¹⁰³. Honors so judiciously conferred redounded with double lustre upon his own character¹⁰⁴. A mind occupied in such rational and benevolent pursuits, could find no room for the lawless suggestions of ambition or power; but, at perfect ease in itself, was able to strike even his enemies with awe and reverence; and, without one painful effort, to secure to a wide and extensive empire the substantial comforts of universal peace, and domestic happiness.

Neither was it less to his glory to have had a Mæcenas for his friend and counsellor, whose household was the consummate model of refined elegance; where modest merit never wanted a patron; where friendship dwelt without jealousy, erudition without contention, wit without petulance; and where the most accomplished scholars of the age were rivals in excellence, without envy¹⁰⁵. This

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¹⁰³ "Ingénia omnibus modis fovit. Re-
citantes et benigne et patienter audivit:
"nec tantum carmina et historias, sed et
"orationes et dialogos." Suet. in Aug. 89.

¹⁰⁴ "At neque dedecorant tua de se judicia,
"atque
"Munera, quæ multâ dantis cum laude
"tulerunt,
"Dilecti tibi Virgilius Variusque poetæ."
Hor. Ep. 2. 1. 245.

¹⁰⁵ "Domus hæc nec purior ulla est,
"Nec magis his aliena malis; nil mihi officit
"unquam,
"Ditior hic, aut est quia doctior; est locus
"unicuique suus."

Ib. Sat. 1. 9. 49.

The same poet, in another passage, gives this affectionate account of several of his most intimate friends;

"Plotius, et Varius Sinuëssæ, Virgiliusque
"Occurrunt; animæ, quales neque candi-
"diores
"Terra tulit, neque queis me sit devinctior
"alter.

"O, qui complexus, et gaudia quanta fue-
"runt!

"Nil ego contulerim jucundo sanus amico."
Sat. 1. 5. 40.

And in another he seems to have described, in one view, almost the whole society of learned men, with whom he spent the best part of his life;

"Plotius et Varius, Mæcenas, Virgiliusque,
"Valgius, et probet hæc Octavius optimus,
"atque
"Fuscus, et hæc utinam Viscorum laudet
"uterque.

"Ambitione relegatâ te dicere possum,
"Pollio; te, Messala, tuo cum fratre; simul-
"que

"Vos Bibuli, et Servi; simul his te, can-
"dide Furni;

"Complures alios, doctos ego quos et amicos
"Prudens prætereo: quibus hæc, sint qua-
"liacunque,

"Arridere velim: doliturus, si placeant spe
"Deterius nostra."

Ib. Sat. 1. 10. 81, &c.

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is not the policy of real tyrants, whose sovereignty has often no firmer basis than the supineness and ignorance of their people; and whose interest it is to discountenance all solid learning, and ingenious investigations of the common rights of mankind, that may help to expose the weak and rotten foundations of despotism.

Upon the whole, therefore, after making all reasonable allowances for the infirmities of human nature in general; for those temptations to which the great and powerful are more particularly exposed; and for the very defective ideas of moral rectitude, under the imperfect system of religion at that time universally prevailing; we may venture to pronounce, that the virtues of Augustus far outweighed his vices; and to enroll him in the catalogue of those princes, who have been a blessing to their country, and an ornament to a throne.

C H A P. IV.

Of the nature of the Imperial Government.—A further view of it under the reign of Tiberius.

Nature of
the Imperial
Govern-
ment.

HAVING pointed out, as minutely as possible, the various steps by which Augustus raised himself to the head of this immense empire, we shall now take a nearer view of the nature of that power, that was the immediate consequence of those encroachments. It must be confessed, however, that the cautious and studied reserve, which, either from choice or necessity, that prince thought proper to assume, through the long succession of years, wherein he stood the unrivalled master of the world, renders it extremely difficult to arrive at that precision which the fidelity of history demands; or to form any thing like a just and accurate idea of that species of government which succeeded the commonwealth.

Feeling

Feeling himself, in fact, an absolute monarch, he found it the wisest policy to conceal the lustre of so invidious a station, behind the veil of humility and moderation. So long, therefore, as the minds of the people were not terrified by a gaudy display of imperial pomp, nor by any injudicious and arbitrary exertions of sovereign sway, they wore the chains, without being sensible of their weight¹; and thus flattered their own imaginations with the notion of being themselves the dispensers of those liberties, which they actually derived from his tacit permission alone. With a standing army on one hand, and the public treasury on the other, he was enabled to stretch the line of his power to whatever length his ambition could aspire²; but he thought it more prudent to leave the extent of it quite undefined, and to appear to obtain it from the voluntary concessions of his countrymen, rather than to extort it by terror and violence; which would be sure to render his name and person odious, without the least addition to his real authority.

The Roman *Emperor*, according to the strict constitutional import of that title only, was not invested with any civil power at all. Under this character, even as now annexed in perpetuity, with all its concomitant privileges, he was no more than the military head of this great body; and his province, as such, was confined to the business of arms, either in repelling foreign invasions, or suppressing domestic tumults³: a power, it is true, very liable to be abused,

and

¹ “Verbo civitatis statu, nihil usquam
“prisci et integri moris: omnis, exuta æqua-
“litate, jussu principis aspicere. Nulla in
“præfens formidine, dum Augustus, ætate
“validus, seque et domum et pacem saf-
“tentavit.” Tac. Ann. 1. 4.

² Τῷ γὰρ ἡγῶν καὶ πύλων καὶ διαπαιθεὶς αὐτοῦ ὁ
Καῖσαρ, ὅτι καὶ τὰς χρηματικὰς κυριεύει (λόγῳ μὲν
γὰρ τὰ δημοσία ἀπὸ τῶν ἐκείνου ἀπικινεῖτο, ἡγῶν δὲ,

καὶ ταῦτα πρὸς τὴν γῆρας αὐτὸς ἀπολαύει) καὶ
τῶν στρατιωτῶν κρατῶν, ἀνταρξήσκει ἡμῶν. Dio
Cass. 53. 16.

³ Grav. de Imp. Rom. 3.

Thus says Tiberius of Augustus, in the
character of Imperator, Ὅτι τὸ μὴ ἐπὶ τῇ
καὶ ἐμπόλεμον εἶδη αὐτοῦ καὶ φρουρήσει καὶ σωσὴν
ὑπεδέξατο, τὰ δ' ἄλλα τὰ ἡγεμονία καὶ ἀκρότητα ὡς
ἀκρότητα; γράψας τι τούτων ἀδυνατοῦς πρὸς τὸ
προπολεμεῖν

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and which was so in fact. But the state, in appearance at least, still preserved her antient legislative and civil rights, and administered them all by their respective magistrates, according to the established rules of the primitive constitution. Whatever active part the emperor chose to take in the administration of civil affairs, was done under the cover of his civil titles, and professedly in conjunction with the senate. Neither was any change made in the laws of private property, except what occasional necessity required. The aim of Augustus, especially, seems to have been, so to blend the monarchical and democratical forms of government together, as to make the Imperial power both the ornament and security of the republic; so that the people in general might enjoy a state of temperate, modest liberty, equally unmolested by the audaciousness of the multitude, and the contumely of the great*. A plan certainly very wise in itself, and the most beneficial to the interests of the subjects at large, that the circumstances and disposition of the times could well admit: and had this mild and politic example been duly respected, and uniformly followed by the rest of his successors, Rome, in the situation she then was, would have had no cause to lament the exchange of an untractable and tumultuous democracy, for a gentle and well-tempered monarchy.

*προπολεμὸν ὕμνῳ τριφών, οὐδὲν τῶν σφαιτέρων λαπή-
ρους αὐτοῦς ἐποίησεν, ἀλλ' ἐπὶ μὲν τοῖς ὀδυσσοῖς φυλάκας
φοβερωτάτους, πρὸς δὲ τοῖς οἰκείοις ἀσπλοῦς, ἀπολεμὸν
εἶναι παρισκινᾷσι. Dio Cass. 56. 40.*

The oration from whence we have borrowed several of the foregoing anecdotes, though delivered in the words of the historian, most probably contained the real sentiments of the orator. And as there can be little doubt of his having dwelt upon those virtues which had been the most conspicuous, and the most generally known to the whole people, it may deservedly pass for a very valuable relique of antiquity, and a just representation

of the character of that illustrious prince; especially as it cannot be considered in the light of a mere tribute of flattery to his memory, the most striking parts of it being confirmed by the united testimony of all the most antient historians.

* Τὴν μοναρχίαν δημοκρατίᾳ μίξας, τὸ, τι εὐν-
διεῖν σφισὶν ἐτήρησεν, καὶ τὸ κοσμίον το, τι ἀσφαλὲς
προσπαρεσκεύασεν, ὥς' ἐξῆν μὲν τῇ δημοκρατικῇ θρασείᾳ,
ἐξῆν δὲ καὶ τῶν τυραννικῶν ὑβρίων ὄντας, ὡς τι εὐειδίᾳ
σώφρονι καὶ ὡς μοναρχίᾳ ἀδελφὴν ζῆν, βασιλευμένους τε
αὐτῷ δουλείᾳ, καὶ δημοκρατουμένους αὐτῷ διχορυσίας.
Dio Cass. 56. 43.

Though

Though the blessings of his equitable government were very gratefully acknowledged by the bulk of the Romans, yet some seeds of envy and ill-will, still lurking in a few gloomy and discontented minds, checked the growth of that public affection and applause, which ought to have been unanimous and universal⁵. A short experience, however, of the conduct of his detestable successor, soon forced them to pay that debt to his memory, which they had denied to his person; and to lament the loss of those blessings, which they knew not how to enjoy when they had them in possession⁶.

So great indeed was the dissimilitude, so striking the contrast between the two characters, that even the enemies of Augustus were fully sensible of the difference; and were, therefore, perversely induced to imagine, that he thus adopted the son of Livia, only as a foil, to set off his own virtues: a supposition, much too absurd as well as injurious to gain any credit, unless from prejudice and ignorance⁷. But the truth really was, that his hopes being totally disappointed by the untimely fate of his two grandsons, Caius and Lucius⁸, he found himself under a necessity of making some disposition⁹; and having then no predilection in behalf of any other,

was

⁵ Το δὲ ἀληθές, ὡς μὲν τῷ παραχρημασθῆναι πολλοί, ὅτι μὲν διὰ πάντας ἰσχυροὺς (sc. παῖδας) Dio Cass. 56. 43. And again, speaking of his virtues—Ταῦτα δὲ ἠπείσαντο μὲν καὶ ζωὸς αὐτῆς, ἐπὶ πλείονι δ' ὁμοῦς μεταλλάξαντος, ἐγνώσαν. καὶ γὰρ φίλοι πῶς το ἀνδρῶπιον οὐκ οὕτω τι εὐπαθεῖν τῆς εὐδαιμονίας αισθανέσθαι, ὥς καὶ δυσυχῆσαι ποθῶν αὐτῇ. ὅτι καὶ τότε περὶ τὸν Αὐγούστον συνέβη. Τῷ γὰρ Τιβέριῳ μετ' αὐτοῦ οὐκ ὁμοίου περιεσθῆναι, οὐκ ἔστιν ἐξῆς. καὶ ἡ μὲν καὶ παραχρημασθῆναι μεταβολῇ τῆς καταστάσεως τοῖς ἡμέτεροις τακμήσθαι. Id. 56. 45.

⁶ Διὸς αὐτοῦ ἐπὶ τῇ Id. 56. 43.

⁷ Τούτου δ' οὐ το σὺμπαν ἀλλήλων διηγεῖται, ὡς τινες καὶ ἐς τὸν Αὐγούστον ὑποκινῶσαι, ὅτι ἐξῆς τῆς τοῦ Τιβέριου, καὶ περὶ τοῦ αὐτοῦ ὁμοῦς ἡ, διαδοχῶν

ἀπιδίξιν, ἵνα αὐτὸς εὐδοξήσῃ. Ταῦτα μὲν δὲ οὐ ὅτι μὲν διαδοχῶν ἡρῶντο. Id. 56. 45.

—“etiam ambitione tactum, ut tali successore desiderabilior ipse quandoque fieret.” Suet. in Tib. 21.

“Ne Tiberium quidem caritate, aut rei publicæ cura successorem adscitum: sed quoniam arrogantiam, sævitiamque ejus intropexerit, comparatione deterrimâ sibi gloriam quæsitivisse.” Tac. Ann. 1. 10.

⁸ Suet. in Oct. 65, and in Tib. 15.

⁹ This seems to be sufficiently clear, from what Suetonius says of his will: “Testamenti initium fuit, quoniam sinistra fortuna Caium et Lucium filios mihi eripuit, Tiberius Cæsar mihi ex parte dimidia et sextante

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Tiberius,
A. D. 14.

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was more easily overcome by the importunities of his wife, to give a preference to her own favourite son¹⁰. Sensible as the old emperor seems to have been of the failings of his new heir, yet he fancied, at least, that he had discovered many virtues in him, which, upon a fair comparison, would be likely to compensate for his faults¹¹: a partiality very naturally resulting from the imbecillity of old age, and from an uxorious fondness for an artful and ambitious woman.

It is not to be denied, that Tiberius, by the advantages of a very liberal education¹², was endowed with many acquired accomplishments, which might have passed very well with the world, and, perhaps, have made him even a tolerable prince, had not his nature been an utter stranger to every humane and virtuous sentiment. In his first appearance before the people, then weeping over the remains of their best benefactor, and common parent, he was lavish in every topic of praise, that could endear and immortalize his memory¹³. Not indeed from any real feelings of the influence of so worthy an example; but with a view of beguiling the fears of a dejected multitude; and of flattering their hopes, that he, who was able to give such strong and pleasing colorings to the portrait, could not fail himself to copy so perfect an original. But so deep a root had dissimulation taken in his heart, that almost every action of his

"fextante hæres esto. Quo et ipso aucta est
"suspicio opinantium, successorem adscitum
"eum necessitate magis, quam judicio; quan-
"do ita præfari non abstinuerit. In Tib. 24.
"¹⁰ "Druso pridem extincto, Nero solus e
"privigniserat: illuc cuncta vergere. Filius,
"collega imperii, confors tribunitiæ potes-
"tatis adsumitur, omnesque per exercitus
"ostentatur: non obscuris, ut antea, ma-
"tris artibus, sed palam hortatu." Tac,
Ann. 1. 3.

¹¹ "Adduci tamen nequeo," says the bio-

grapher, "quin existimem circumspectissi-
"mum et prudentissimum principem, in tanto
"præsertim negotio, nihil temerè fecisse: sed
"vitiis Tiberii virtutibusque perpen-
"siores duxisse virtutes." Suet. in Tib. 21.

¹² Τίβεριος ευπατριδὲς μὲν ἦν, καὶ ἐκπαίδευτο, φωνὴ δὲ ἰδιωτῶν ἐμύχρητο. Dio Cass. 57. 1.
The whole of the character of this emperor is here very finely drawn, but too long to be inserted.

¹³ See his Funeral Oration, so often before alluded to.

life was the direct reverse of what he professed¹⁴; and it even became a maxim with him, that a prince, who meant to be independent, should never disclose his real thoughts¹⁵.

It may indeed be alleged, that in this respect Tiberius only followed the example of his predecessor. But, to make the parallel just and applicable throughout, proper regard should be had to the very different situations of the two princes; to the motives of their actions, and to the consequences from thence resulting. Augustus began his political career under every possible disadvantage. His early connexions were of the most odious kind; he had himself taken a very active part in the public calamities; and had risen to greatness upon the ruins of the most respectable families in Rome. Time and reflexion soon instructed him, that prejudices derived from such causes could not be removed without the utmost difficulty. Though fear, hope, or other meaner inducements, had attached the majority of the people to his interests, there were many yet who hated his person, or envied his fortune.

These embarrassments suggested the use of various artifices, which a prince of a less cautious temper would have disdained. But as he does not appear, in all this, to have acted under the influence of any bad principle; and, on the contrary, to have exerted whatever power he thus obtained, towards the re-establishment of the peace of his country, he surely deserves somewhat milder treatment, than he has usually received from the more severe censors of later times. His conduct, if not within the strict line of moral rectitude, was, at worst, no more than one of those efforts of worldly policy, which was dictated by necessity, rather than choice; which had the welfare of the public for its object, as well as his own; and consequently cannot, with any color of justice, be

¹⁴ Οὐτε ὡς ἐπιθυμῶν προσποιεῖτο τι, καὶ ὡς εἰλεγεν, οὐδὲν ὡς εἰπεῖν ἐβούλετο· ἀλλ' ἡναντιωτάτους τῇ προαιρέσει τοὺς λόγους ποιοῦμενος, καὶ τὴν ὁποῖον ἤθελετο, καὶ κατὰ τὴν ἑμῶν προτίμητον. Dio Cass. 57. p.

¹⁵ Το, τὴν συμπερὶ, οὐκ ἡξίου τοῖς ἀνταρχοῦντα καταδιδῶν ὡς φρονεῖ εἶναι. Id. ib. Thus like-

wife says another very judicious historian,

"Tiberio, etiam in rebus quas non occultaret, seu naturâ, sive assuetudine, suspensâ."

Tac. Ann. 1. 11.

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charged to the account of studied hypocrisy; a vice, of all those which degrade the frail nature of mankind, the most unfriendly to the general interests of society.

But Tiberius set out with more auspicious prospects. He took possession of the throne by the special recommendation of Augustus himself; was quietly invested with the imperial power, which, from the former mild and prudent use of it, had now acquired a consistence, and was almost as quietly submitted to, as if it had been the constitutional mode of government. But, though he might have thrown off the mask with little danger, he took delight in imposing upon the credulity of the world by a specious outside, while he was secretly plotting against the lives and liberties of the good and virtuous; and privately indulging himself in every vicious pleasure that could defile a rational being. During this interval, he practised hypocrisy almost by rule, and was the most complete proficient in this abominable vice, that is to be found among the records of human depravity.

Having taken care to secure the allegiance of the army in the more distant provinces, the new emperor appeared at Rome with a small guard only about his person; and pretending to be afraid that the populace might seize the body of Augustus, and commit it to the flames in a tumultuous manner, as they had done that of Julius Cæsar, he obtained an additional reinforcement from the senate¹⁷; but still called them the soldiers of the republic, not his own¹⁸.

Thus, fully secure of his darling object, this artful dissembler still affected every kind of delay, and expressed the greatest reluctance to the burden which was forced upon him by a clamorous assembly; who were too sensible of their own feeble and precarious situation, to take it up themselves. He urged every objection that might reasonably justify his refusal, even his advanced age, and the

¹⁷ Τους δὲ σωματιφυλάκας ἀμφ' αὐτοῦ ἤδη ἔχον, ὥσπερ τοῦ Καίσαρος, καύσωνσι. Dio Cass. 57. 2.
¹⁸ Εἶδον δὲ τῆς γιγνούσης συναρσῆος οἱ, ὥστε μηδὲν βίαιον εἶναι τῇ τοῦ σωματοῦ αὐτοῦ ταφῇ παθεῖν. εἰδὼς, γὰρ ὁ δὴν, μὴ τινὲς αὐτοῦ ἀρπασαμένους, εἰς τὴν ἀγορὰν, ἵσταντο. Id. ib.

weakness of his eye-sight". He declined the titles of Imperator, and of "Pater Patriæ," when pressed upon him by the people; and was very sparing in the use even of that of Augustus, though heir to his fortune". He spoke of the empire with horror, as of a monster too fierce and untractable for him to manage; requesting to have some partners assigned him to share his toils: and, when seeming to be vanquished by the urgent solicitations of the senate, he pretended to accept it only for a time, upon condition of being permitted to lay down the servile load, whenever they should please to indulge him with the liberty of withdrawing from this busy scene of life, to spend his old age in tranquillity and retirement". Such were

¹⁹ Ταῦτα μὲν οὐκ ὁμοῦς εἰρήσκει, καὶ τὰ τῆς ἀρχῆς ἔργα πάντα διοικῶν, πρῶτον μὲν αὐτὸς διατάσσας καὶ τὸ μὲν πρῶτον καὶ πᾶσαν αὐτὴν διὰ τὴν ἡλικίαν. (ὡς γὰρ καὶ πρῶτον αὐτὴν ἐγγύονα) καὶ δ' ἀμύλων πῶς (πλείους γὰρ τὴν σπουδὴν βλέπων, ὡς γὰρ τῆς ἡμέρας ὥρα) ἐξισοῦσαι εἰργασίαν. Dio Cass. 57. 2.

²⁰ Μὴ λόγῳ κἀννοῦμαι πῶς. Ψηφισθὲν γὰρ αὐτὸν καὶ ταῦτο μὲν τῶν ἀλλῶν οὐκ ἔδειξε, καὶ τοὺς κληροῦς τοῦ Αὐγούστου λαβεῖν, τὴν ἐπιτέλειαν αὐτὸν ταῦτα οὐκ ἔδειξε. Dio Cass. 57. 3. "No-
men Patris Patriæ Tiberius a populo sa-
pius ingestum, repudiavit." Tac. Ann.
1. 72. "Prænomen quoque Imperatoris,
cognomenque Patris Patriæ, et civicam in
vestibulo coronam recusavit. Ac ne Augusti
quidem nomen, quanquam hæreditarium,
ullis nisi ad reges ac dynastas epistolis, ad-
didit." Suet. in Tib. 26.

"The whole of this well-acted farce is finely described by the Latin historian; "Principatum, quamvis neque occupare
confestim, neque agere dubitasset, et sta-
tione militum, hoc est, vi et specie do-
minationis assumptâ, diu tamen recusavit
impudentissimo animo: nunc adhortantes
amicos increpans, ut ignaros quanta
belluæ esset imperium: nunc precantem
senatum, et procumbentem sibi ad genua,

ambiguis responsis, et callidâ cunctatione
suspendens: ut quidam patientiam rum-
perent, atque unus in tumultu procla-
maret, aut agat, aut desistat: alter coram
exprobraret, cæteros quod palliendi sint, tarde
præstare, sed ipsum quod præstat, tarde pol-
liceri. Tandem quasi coactus, et querens
excusationem et excusationem injungi sibi servitutem,
recepit imperium: nec tamen aliter quam
ut depositurum se quandoque spem faceret.
Ipsius verba sunt hæc; dum veniam ad id
tempus quo vobis æquum possit videri, dare
vos aliquam sanxistis meo requirunt." Suet.
in Tib. 24.

Thus likewise says Tacitus of the same transaction; "Versæ inde ad Tiberium pre-
ces, et ille variè disquirebat, de magnitu-
dine imperii, sua modestia. Solam divi
Augusti mentem tante molis capacem:
se in partem curarum ab illo vocatum;
experiendo didicisse, quam arduum, quam
subiectam fortunæ, regendi cuncta onus.
Proinde in civitate tot illustribus viris
subnixæ, non ad unum omnia deferrent;
plures facilius munia reip. sociantis labo-
ribus executuros." Tac. Ann. 1. Εἰρη-
νὴν δὲ κοινὰς τῆς τιμῆς καὶ συνειρηνοῦσας—ἦν. Dio
Cass. 57. 2.

the arts, by which this insidious dissembler established himself in the seat of power; and, thus secure, reduced all the remaining substance of the antient republic to a faint and flitting shadow.

Careful, however, to avoid making any ill impression upon the minds of his subjects, especially during the life of Germanicus, of whose amiable and popular character he was extremely jealous²², he began his reign with an appearance of the greatest modesty and humility²³; submitting with patience to the tongue of calumny, and affecting to consider libelling as the privilege of a free state²⁴. The senate and magistrates being still permitted to retain the show of their former dignity and power, he referred matters of the most trifling moment to the judgment of the fathers²⁵; made no complaint even when their opinion went against him²⁶; and suffered every thing to be administered by the magistrates, according to the ordinary course of law²⁷.

Here let it be remembered, that whatever power the moderate policy of Augustus had reserved to the antient "comitia" expired with him, and was transferred altogether, by Tiberius, to the senate²⁸.

²² Εἰς τοιαύτῃ αὐτῷ τρόπῳ, ἐφ' ᾧ οὐκ ἔτι Γερμανικὸς ἔζη, διηγούμενος. Dio-Cass. 57. 7.

²³ "Liberatus metu, civilem se admodum inter initia, et paulo minus quam privatim egit." Suet. in Tib. 26.

²⁴ "Sed et adversus convicia malosque rumores et famosa de se ac suis carmina firmus ac patiens, subinde jactabat, in civitate libera linguam mentemque liberam esse debere." Ib. 28.

²⁵ "Quin etiam speciem libertatis quamdam induxit, conservatis senatui ac magistratibus et majestate pristina et potestate: neque tam parvum quidquam, neque tam magnum publici privatiue negotii fuit, de quo non ad P. C. referretur." Ib. 30. Αυτοὶ μὲν καὶ οἱ αὐτοὶ ἢ ἢ ἢ αὐτοὶ ἐκράτει,

πάντα δι' αὐτῶν καὶ τῆς σημαντικότητος αἱ τῆς γερουσίας ἐστέρησι, καὶ ἐκείνη ἐκείνου. Dio Cass. 57. 7.

²⁶ "Quædam adversus sententiam suam decerni ne questus quidem est." Suet. in Tib. 31. Εἰς τὸ μᾶλλον τῶν ἐαυτοῦ γυναικῶν τιμῶν καὶ ὅπως ἀντιπάλῃ αὐτῇ παντὶ τῇ παρ' ἑαυτοῦ ὀργῇ· ἀλλὰ καὶ τὰναντία δὲ ἔγωγε ὅτι ψευδίζουσιν τὴν ἐφήμερον. Dio Cass. 57. 7.

²⁷ "Cætera quoque non nisi per magistratus et jure ordinario agebantur." Suet. in Tib. 31.

²⁸ "Tum primum e campo comitia ad patres translata sunt. Nam ad eam diem, etsi potissima arbitrio principis, quedam tamen studiis tributum fiebant. Neque populus adeptum jus questus est, nisi inani rumore." Tac. Ann. 1. 15.

Mention,

Mention, indeed, is made of "comitia" for the appointment of consuls, in this and some following reigns; but the historian himself, who lived so near the time, seems to understand very little of their nature and use; and concludes with observing, that the greater their present appearance of liberty, the surer was it to terminate in a more pernicious slavery²⁹.

From this time, therefore, the people lost sight of their old popular assemblies, except only for a short moment, when Caligula made a feint to revive them³⁰; but he himself very soon either suppressed, or suffered them to drop into disuse³¹; after which, few certain traces of them are to be found in history. It is true, that we read of princes, who, on their election to the consulship, were presented in solemn form before the people³²; but this was not designed as any compliment to their primitive constitutional character; nor was it done with any view of restoring their right of

²⁹ "De comitiis consularibus, quæ tum primum illo principe, ac deinceps fuere, vix quidquam firmare ausim.—Speciosa verbis, re inania, aut subdola: quantoque majore libertatis imagine tegebantur, tanto eruptura ad inferius servitium." Tac. Ann. 1. sub fin. The Greek historian likewise speaks of them to the same effect, when summoned for the appointment of consuls; ὅτι οὐκ ἔστιν ἄξιον γινώσκειν, ὡς ἴσως ἐπιδεικνύται. Dio Cass. 58. 20.

³⁰ "Tentavit et comitiorum more revocato, suffragia populo reddere." Suet. in Cal. 16. Τὰς ἀρχαιότητας τῶν τε δήμων καὶ τῶν ἀλλοδαπῶν ἀποδίδωκε, λυσας ὅσα περὶ αὐτῶν ὁ Τιβέριος ἔθηκεν. Dio Cass. 59. 9.

³¹ Τὸν δὲ διὰ Δομιτῶν τοὺς συναρχόντας αὐτῶν, λόγῳ μὲν ὁ δῆμος, ἔργῳ δ' αὐτοὺς ἰδὼντες. ἀπιδόκει μὲν γὰρ τὰς ἀρχαιότητας αὐτοῖς; ἀπὲρ δὲ ἐκείνῳ ἀργότερον τὴν (ὅπου τὴν πόλιν ἔχοντες μὴδὲν ἐλευθέρως καὶ χρηματικῶς) οἱ τοὺς δρόμους ἐν ταῖς πρὸς τὸν αἰθρῶν οὐρανὸν οὐρανὸν, καὶ τῶν σπουδαρχόντων, μάλιστα μὲν μὴ πλείονος ἢ ἑσπέρως ἀμειβόμενοι οὐδὲ ἐπὶ πλεονεξίᾳ, οἱ δὲ ποτὶ καὶ

ὅπως τὸν ἀριθμὸν γινώσκοντες, διαμολογούμενοι πρὸς ἀλλήλους· τὸ μὲν σχῆμα τῆς δημοκρατίας ἐσώζετο, ἔργῳ δ' οὐδὲν αὐτῆς ἐγγίνετο. Dio Cass. 59. 20.

³² Thus Vitellius; "Comitia consulum cum candidatis civiliter celebrans, omnem infamæ plebis rumorem, in theatro ut spectator, in circo ut fautor affectavit." Tac. Hist. 2. 91. But still, to lessen their consequence, he ordained that they should be held only every ten years. "Comitia in decem annos ordinavit, seque perpetuum consulem." Suet. in Vit. 11. Domitian likewise, upon a certain occasion, was thus publicly announced to the people by the herald; but this being done by a wrong title, the tyrant put to death one of his near relations, "Occidit et—Flavium Sabinum, alterum ex patruelibus, quod cum comitiorum consularium die destinatum, perperam præco non consulem ad populum, sed imperatorem pronuntiasset." Suet. in Dom. 10. Grav. de Rom. Imp. 15.

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suffrage, or even of approbation; but only to gratify a selfish vanity, by an idle display of their own grandeur; and to attract the wanton acclamations of a thoughtless populace, assembled in the theatre, or in some other place of public resort. Whatever semblance, therefore, these few flattering instances may bear of a restitution of popular power, they were no more than the feeble shoots from a decayed trunk, which spring forth and look green for awhile, but die away upon the first infectious blast.

The pretence of Tiberius, for making this material change in the constitution, was founded upon this plausible reason, that the empire was now so much enlarged, and the citizens become so very numerous, that they could not be called together upon every occasion, without great inconvenience and tumult. His real aim, however, was to extinguish the poor remains of the old republican spirit, to which the Claudian family had always borne an hereditary hatred; and thus to get rid of the only obstacle, that checked the free exercise of his arbitrary will and pleasure. As to the senate, by his natural influence, as the head of it, and by the allurements of honours and riches on the one hand, and the terrors of military force on the other, he foresaw no difficulty in reducing *that* to a state of the most implicit submission¹¹. This once venerable body, every member of which bore an equal rank with the first potentates of the earth, soon degenerated into a servile, pusillanimous herd, the mere creatures of a worthless and profligate prince; totally destitute of that genuine Roman virtue and spirit, which, in ancient times, had so nobly and successfully resisted the rudest assaults of vice and corruption, and had insured them the dominion of the world. It had now lost all its original lustre; and though still indulged with the

¹¹ Thus says Tacitus of them, "At Rome: quanto quis illustrior, tanto magis falsè ruere in servitium consules, patres, eques; ac festinantes." Tac. Ann. 1. 7.

right of legislation, yet the exercise of that power being subject to the controul of a prince, who could be absolute whenever he pleased, it enjoyed, in effect, no more than a precarious, unsustained liberty; and served only the same wretched purposes which the parliaments of France do at this day, to register their monarch's pleasure, and to give a sanction to those laws, which entail eternal slavery both upon themselves and posterity.

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But, notwithstanding this actual predominancy of absolute power, the Roman constitution, in point of exterior form, still wore the garb of aristocracy; so as to come very properly within the description given of it by a late learned Italian; who calls it "a republic of nobles, the military head of which was the emperor; the civil, the consuls; and the entire body, the senate;"³⁴ and thus the traces of expiring liberty were preserved for a while³⁵, in the ostensible majesty of the senatorial assembly, and in the ancient and splendid titles of the civil magistrates³⁶.

Even the people, though now humbled and degraded from their former rank in the state, and share in the administration, were still formidable by their numbers: their inherited hatred of all violent exertions of sovereignty was not yet thoroughly extinguished, though too feeble to shew itself with effect; and, if too much oppressed, there might have been danger of their seeking a remedy from despair. Prudence, therefore, taught many of the succeeding princes to treat every order of the nation with a proper degree of respect and attention; to regulate their own behaviour by the laws of the land; and, by maintaining the authority of the superior magistrates, to support their own. From hence the commands of the prince came to be considered not as the dictates of a monarch, but as the concurrent voice of the whole magistracy.

³⁴ Grav. de Imp. Rom. 25.

³⁵ "tis libertatis." Tac. Ann. 1. 74.

³⁶ "Manebant etiam tum vestigia morien-

³⁶ Grav. O. J. 1. 104.

These

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These wise maxims of policy were observed, for a time, even by Tiberius. Though he every day grew more of the sovereign³⁷, and though extremely fickle in all his motions, he sometimes exerted his power to very laudable ends; so as to rescind several improper constitutions of the senate; to keep a strict eye over the magistrates, and see that justice was duly administered, according to the established principles both of law and religion. He would likewise, upon occasion, sit as judge himself, in a tribunal purposely erected in the Forum, where he delivered his own opinion as president of the court; and, in imitation of Augustus, would call in assessors to advise him in questions of difficulty³⁸.

Thus far, therefore, little inconvenience was felt, or danger apprehended, from the late alteration. The hitherto gentle deportment of the prince, his constant professions of moderation³⁹, the general freedom of debate, and legislative power, still exercised by the senate⁴⁰, concealed from the eyes of the people that dangerous rock, on which their dearest liberties were soon to be cast away. So certain is it, that no state can be truly called free or happy, whose political security has no better basis than the sole pleasure of a single ruler, who, if not a tyrant by inclination, is always liable to errors of

³⁷ "Paulatim principem exoruit, præstititque: et si varium diu, commodiorem tamen sæpius, et ad utilitates publicas proniorem. Ac primo eatenus interveniebat, ne quid perperam fieret. Itaque et constitutiones quasdam senatus rescidit: et magistratus pro tribunali cognoscentibus plerumque se offerebat confitium—judices—legum et religionis, et noxæ de qua cognoscerent, admonebat: atque etiam, si qua in publicis moribus desidia aut mala consuetudine labarent, corrigenda suscepit." Suet. in Tib. 33.

Εδραζι μιν ον, —επιφοιτα δε και επι τα των αρχοντων δικαστηρια, και παρακαλυμινος ον αυτων και απαρακαλυτος, και κινωις μιν εν τη αυτη χωρη καθηροδαι, και, πικρος τι επι τη βαδμ εν κατακτινις σφαι

κρημινου καθιζων, ολην δαα ιδουαι αυτη, ως πριδρος. Dio Cass. 57. 7.

³⁸ "Nec patrum cognitionibus satiat, iudiciis assidebat,—sed dum veritati consuebat, libertas contumpebatur." Tac. Ann. 1. 75.

³⁹ Επειποιητο μιν βημα εν τη αγορα, εφ' ου προκαθιζων χρηματιζε, και συμβουλις αι, κατα τον Αυγουστον, παραλαμβαιν. Dio Cass. 57. 7.

⁴⁰ Οντε δισποτην ιαυτοι τοις ελευθεροις, οντε αυτοκρατορα, πλην τοις γρατιωταις, καλειν οφειν. —Προσκειτος τι της γεροντιας οφ' ιαυτη ονομαζιτο. και πολλοις εν ελεγει, οτι, δισποτης μιν των δλων, αυτοκρατωρ δε των γρατιωτων, των δε δε λαιπων κροκτος ειμι. Dio Cass. 57. 8.

⁴⁰ Grav. de Rom. Imp. 20.

judgment,

judgment, or to the seductions of ambition; and, if ever so mild and uncorrupt, cannot be sure of transmitting his virtues to his successor, together with his power. CHAP.
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Tiberius, who, from prudential motives alone, had hitherto imposed upon the world, under the mask of goodness, to which his nature was a stranger, being once released from restraint, abandoned himself to every cruel and licentious passion. He revived, and gave a new turn to, the laws of high-treason⁴¹; enforcing them with the utmost severity, not only against those who had offered any affront to Augustus or Livia, but to himself. Children and slaves were tortured, to oblige them to accuse their parents and masters; informers were enriched with the goods of the condemned, and encouraged to pursue that odious occupation, by the hopes of rewards and honors⁴².

At length, disgusted with a world, to which he was deservedly the object of abhorrence and execration, he exchanged the active scenes of the busy capital, for the voluptuous and effeminate retreats of a solitary island; where he wasted the remains of an unprofitable and guilty life, in a course of the most brutal profligacy and sensuality, such as the pen of decency dares not commemorate: growing daily more infamous, in proportion as age and impotence weakened the powers of enjoyment; and desire, bereft of ability, rendered a perseverance in debauchery not only detestable, but ridiculous. Born with a flexibility of disposition, that could in a moment accommodate itself

⁴¹ "Legem majestatis reduxerat, cui non men apud veteres idem, sed alia in judicio veniebant, si quis prodicione exercitum, aut plebem seditionibus, denique male gesta republica majestatem populi Romani minuisse. Facta arguebantur, dicta impune erant." Tac. Ann. 1. 72.

⁴² Τίβεριος δὲ, ἐπὶ τὸ σφοδρὸν οὐκ ἐπ' ὀλίγον, καὶ τὰ τοιαῦτα τῶν προδῶν ἐργασμένην αὐτῷ, πολλὰν οἶον καὶ καλὰν πρὸς τὰ τὴν γὰρ ἀλλὰ ἀγρίως ἤρξε, καὶ ταῖς τῆς αἰσθῆσις δίκαις, ἢ τὰς οὐχ' ὅσον ἐς τὸν Αὐγούστου, ἀλλὰ καὶ ἐς αὐτὸν ἑαυτοῦ τὴν τε μέτρα αὐτοῦ, ἀρᾶς τε ἢ καὶ ἰσχυρὰ ἀντιπαραδεδωκέναν, διωκὲς ἐπέβη. ἐβασανίζοντο δὲ οὐχὶ οἰκίαι μόνον καλὰ τῶν ἰδίων διασπολίων, ἀλλὰ καὶ ἐλευθέρων καὶ πωλίων. ἢ τε καὶ ἡγορησάσης ἢ καὶ καλαμαφιστησάσης τινος, τὰς οὐσίας τῶν ἀλλοκομμένων διέλαγχοντο, καὶ ἀποστῆναι καὶ ἀρχὰς καὶ τιμὰς προσελάμβανον. Dio Cass. 57. 19.

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to the most opposite extremes, he counterfeited either virtue or vice with such wonderful facility and address, that he appeared wholly devoted to that, which he had assumed only for a particular occasion⁴³. By a shameful abuse and misapplication of very excellent talents, which nature had liberally bestowed, and art as carefully improved, he became a terror and pest to his country, of which, with equal ease, he might have been the comfort and ornament. But his whole life was a contradiction to itself. Alike insincere and deceitful in the practice both of good and evil, he extinguished that mutual confidence, which ought ever to subsist between a sovereign and his subjects; dissolved every tie of political union; and, at his death, left the constitution an immense wreck, adrift upon the sea of anarchy, without helm or compass.

The monarchical power having, as we have now fully seen, arisen chiefly out of the accidental confusions of the state, and having gradually gathered strength, more from the fears and inattention of the other branches of the legislature, than from the determined policy of the original authors of these revolutions, the succession was never regulated by any fixed principle; but, upon any sudden demise, usually lay at the mercy of chance. Sometimes it was transmitted by the intrigues of the reigning emperor, who contrived to nominate his own successor, or to assume him into partnership with himself, with the right of survivorship. But more frequently it became the prey of a seditious and lawless army; who conferred it upon such as were best able to gratify their avarice, or best disposed to encourage their insolence; and they seldom failed to find a senate sufficiently obsequious, to give a full sanction to these irregular nominations.

⁴³ Πλὴν γὰρ μὴ ἀρετᾶς, πλὴν γὰρ δὲ κακίας ἔχοντος, καὶ ἰδιωτικῆς αὐταῖς, ὡς καὶ μορφῆς, περὶ τῆς ἐξουσίας. Dio Cass. 58. 28.

To do them justice, however, several of these, by whatever means elected, became the brightest ornaments of the throne they filled. Born without hopes of a crown, they were not corrupted by that narrow, partial, and vicious education, so common with princes. The general felicity of their people was the peculiar object of their concern: and thus did the Romans, at various intervals, enjoy every comfort of domestic security, that could have been derived from the most perfect and best-guarded form of government in the world.

C H A P.
IV.

But the sublimest virtues could not protect even the most virtuous against the murderous hands of treason; and their places were too often supplied by others, who, so far from being adorned with those accomplishments that could recommend them to a throne, were deformed by every vice that could be a reproach to human nature. It is true, indeed, that the same hands, by which they had been so wantonly exalted, as suddenly deposed them, and "laid their honors in the dust." Their subjects, justly provoked by their accumulated oppressions, disowned them for their sovereigns; erased their acts from the records of the state; defaced their images; declared them public enemies to their country; and put them to ignominious deaths: punishments, which, though deservedly inflicted, served rather to gratify revenge, than to redress injuries. Each of these tyrants, however short his reign, seldom wanted time to give some fresh wound to a broken and declining constitution; till, at last, imperial despotism, though not formally adopted or acknowledged by the legislature, became the only operative principle of the Roman government; as will clearly appear from a cursory view of the political characters of the succeeding emperors, for the two following centuries.

C H A P. V.

A general view of the political characters of the succeeding Emperors, to the reign of Alexander Severus.

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III.
Caligula,
A. D. 37.

THE death of Tiberius filled the hearts of the Roman people with the most extravagant transports, as if their miseries were approached to their final period, beyond any possible danger of a future renewal. The unbounded munificence, the polite carriage, and liberal professions of Caligula¹, when contrasted with the insatiable avarice, the unsocial pride, and sullen misanthropy of the extinct tyrant, encouraged these delusive hopes, and made the accession of this young prince appear as a public blessing: they imposed upon the discernment of the senate; and induced them, without weighing the consequences, to invest him with the same absolute powers, which had been already enjoyed by his predecessors²: and to sacrifice hecatombs of bleeding victims, in commemoration of this disgraceful desertion of their own natural liberties.

But this flattering gleam of comfort was obscured by a sudden reverse, the more terrible, as it was less expected. By convincing his subjects that he knew what belonged to the duties of a good prince, he rendered his subsequent cruelty still more provoking³: by heightening their sensibility of happiness, he sharpened the edge of

¹ "Incendebat et ipse studia hominum
"omni genere popularitatis." Suet. in Cal.
15. Προς δι, τα καλαυφθισια απ' αυτου παλιν,
ας και παρ' αυτου δι, τοις τι αλλοις, αποδου, μεγα-
λοφυχιας τινα δοξαι παρα τοις πολλοις ελθουσα.
Dio Cass. 59. 2.

² "Ingresso urbem (sc. Caio) statim con-
"sensu senatus, et irrumpentis in curiam
"turbæ, irrita Tiberii voluntate, qui testa-
"mento alterum nepotem suum prætexta-

"tum adhuc cohæredem ei dederat, jus
"arbitriumque omnium rerum illi permissum
"est, tanta lætitia, ut tribus proximis men-
"sibus, ac ne totis quidem, supra 160,000
"victimarum cæsa tradantur." Suet. in
Cal. 14.

³ "Hactenus quasi de principe, reliqua
"ut de monstro narranda sunt." Suet. in
Cal. 22.

their

their misery: and, by tantalizing their longing appetites with the sweet relish of liberty, made the cup of slavery more bitter and unpalatable. Not content with a silent disobedience to the laws of his country, he openly claimed an exemption from all legal obligation whatever; thinking nothing too much for a people to bear, which was within the compass of his power to enforce*. Insensible to the pleasure of possessing the love of his subjects, he defied their hatred, so long as he could excite their fears⁵; and, as if his own despotism were not a sufficient affliction, lamented that his reign was not distinguished by some epidemical calamities⁶. The very scenes of his amusement and recreation were polluted with blood; and an executioner made a necessary part of the retinue at his feasts, where questions of the most serious import were determined by the conviction of torture⁷.

In proof of the natural opposition ever subsisting between learning and tyranny, he declared himself an enemy to literary merit in all ages. Impelled by this envious principle, he demolished the statues erected to the memory of many illustrious men, and preserved by Augustus with the most reverend care; defacing them beyond the possibility of reparation; and forbidding the future erection of any others, without his express consent. He meditated the abolition of the poems of Homer, for the vain satisfaction of exercising the same liberty as Plato, who had been pleased to exclude this first-

* “Immanissima facta augebat atrocitate
 “verborum. Nihil magis in natura sua lau-
 “dare se, ac probare dicebat, quam, ut ipse
 “verbo utar, ἀπαρτίζω. Monenti Anto-
 “niae avix, tanquam parum esset non obe-
 “dire; memento, ait, omnia mihi et homini
 “licere.” Suet. in Cal. 29.
 5 “Tragicum illud subinde jactabat,
 “Oderint, dum metuant.” Id. ib. 30.
 6 “Queri etiam palam de conditione
 “temporum suorum solebat, quod nullis
 “calamitatibus publicis insignirentur.” Id.
 ib. 31.
 7 “Animum quoque remittenti, ludoque
 “et epulis dedito, eadem dictorum facto-
 “rumque scævitia aderat. Sæpe in con-
 “spectu prædentis vel commessantis seriz
 “questiones per tormenta habebantur.
 “Miles decollandi artifex quibuscunque e
 “custodia capita amputabat.” Id. ib. 32.

born of the muses from his visionary commonwealth. He was, likewise, very near removing the busts and writings both of Virgil and Livy from all public libraries; the one, as totally devoid of genius and erudition; the other, as a verbose and careless historian: and threatened to silence the whole profession of the law, that no one might remain to give answers in that science, except himself*.

Powers, to which neither the prudent reserve of Augustus, nor the timid cunning of Tiberius, ever dared to aspire, he boldly assumed without fear or moderation*. He was even going so far as to distinguish his person with the outward badge of the regal character. But his friends having diverted him from this dangerous extravagance, by a prudent stroke of flattery, "That he was already much superior to kings and princes," he made amends to his own vanity, by the more profane, though less offensive assumption of divine honors¹⁰. To mortify the senate, he obliged many of those who had borne the highest offices of the state, to run before his chariot, or to wait at his

* "Nec minore livore ac malignitate quam
"superbia sævitique pæne adversus omnis
"xvi homines grassatus est. Statuas virorum
"illustrium, ab Augusto ex capitolina area
"propter angustias in Martium Campum
"collatas, ita subvertit, atque disjecit, ut
"restitui salvis titulis non valuerint. Ve-
"tuitque posthac viventium cuiquam usquam
"statuam, aut imaginem, nisi consulto se
"et auctore, poni. Cogitavit etiam de Ho-
"meri carminibus abolendis. "Cur enim
"sibi non licerat, dicens, quod Platoni licuisset,
"qui eum a civitate, quam constituabat, ejec-
"erat?" Sed Virgilii et Titi Livii scripta et
"imagines, paulum absuit, quin ex omni-
"bus bibliothecis amoveret: quorum alte-
"rum, ut nullius ingenii minimæque doctrinæ;
"alterum, ut verbum in historia negligen-
"temque carpebat. De juris quoque con-

sultis, quasi scientiæ eorum omnem usum
"aboliturus sæpe jactavit, se, mehercule,
"effedurum, ne quid respondere possint, præter-
"sum." Suet. in Cal. 34.

⁹ Τῇ δ' αὐτῇ τοῦτ' ἐποτρύνει καὶ ὅτι πάντα ὡς
ἐπὶ αὐτῷ ἐκέρχοντο. δημοκρατικώτατος γὰρ ἦν καὶ τὰ πρῶτα
δοξασ (ὡς καὶ ἐν τῇ δὲ μὲν ἢ τῇ γὰρ βουλευτῶν αὐτῷ
μὴ τῶν ὀνομάτων τῶν ἀρχαίων προσδοκᾶν τι), με-
γαλυντικώτατος ἐκέρχοντο ὡς πάντα ὅσα ὁ Αὐγούστου ἐ-
ποτρύνει τῆς ἀρχῆς χάριν μολὶς καὶ κατ' ἐν ἑκάστῳ
ψηφισθῆναι οἱ ἰδίῳ (ὡς ἐν τῇ δὲ Τίτιος οὐδ' ὅλως
προσέλατο) ἐν μίᾳ ἡμέρᾳ λαβῆναι. Dio Cass. 59 31.

¹⁰ "Nec multum absuit, quin statim dia-
"dema sumeret, speciemque principatus in
"regni formam converteret. Verum ad-
"monitus, et principatum et regum se-
"excessisse fastigium, divinam ex eo ma-
"jestatem asserere sibi coepit." Suet. in
Cal. 22.

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V.

Claudius,
A. D. 41.

και τον ἵππον συμερια ἀπιδαν. Dio Cass. 59. 28.

¹⁴ Τοιούτῳ μὴ τότε αυτοκράτορι οἱ Ῥωμαῖοι
παρδεδόσαν· ὥς τε Τίβερης ἔργα, καὶ τῶν χαλκί-
ναια δέξαντα γίνονται, τοσούτοι παρὰ ταῖς
Γαίῳ, ὥς τε ταῖς Αὐγούστου παρ' ἐκείνῳ, παρὲν τε.
Dio Cass. 59. 5.

“*Consules cum senatu et cohortibus
urbanis forum capitolumque occupârunt,
asserturi communem libertatem.*” Suet.
in Claud. 10.

Του Γαίου απαλλασζοτος, φιλακας εκαταχουσε
της πολως δι' υπατοι διαπεμφαντες, την τε βολεην
εις το Καπιτωλιον ηδρουναι, και πολλας και πακι-
λαι γινουσαι ελεγχθσαι. τοις μιν γαρ δημοκρατειουσαι,
τοις δε μοναρχικουσαι εδοκει· και ο μιν τοι, οι δε τοι
ηρυντο, και δια τυτο την ημεραν την λοιπην και την
ηυκτα πασαν κατεπρμψαν μηδεν τελειωσαντες. **Dis-**
Cass. 60. pr.

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of such a debate involved the whole assembly in the most irreconcilable dissensions; and in the midst of the confusion, the soldiers, roaming about the city in search of plunder, discovered Claudius, who had concealed himself for fear, and saluted him Emperor. In this act of usurpation they were immediately supported by the general cry of the populace, who were more desirous of a single governor; and the senate, after some faint struggles, concurred in the nomination, and decreed to him the usual honors¹⁶.

This was the first attempt made by the soldiery to impose a sovereign upon the Roman empire; but it was an example too flattering to their natural ambition, for them to lose sight of in future. From henceforward, therefore, the seeds of a more military and arbitrary form of government began to take root; which, in process of time, gained such an irresistible ascendancy over every other part of the constitution, that the senate became no better than the servile ministers of the will and pleasure of the army; though, for the present, it did not appear to produce any very visible alteration.

Claudius, with many vices and imperfections, was not utterly destitute of virtues¹⁷. His education, chiefly under the direction of women, had been narrow and defective, which made him indolent, timid, and irresolute: having nothing either liberal or spirited in his composition, he was a slave to those about him¹⁸: but this indolence

¹⁶ "Senatu segnior exsequendis conatibus, per tædium ac dissensionem diversa consentium, et multitudine quæ circumstabat, unum rectorem jam nominatum poscente, armatos pro concione jurare in nomen suum passus est." Suet. in Claud. 10.

Οι δὲ ὑπάτοι τινος ἀλλῆς μὲν καὶ δημαρχοῦς πειμπονίης, ἀπηγορεύοντες αὐτῇ, μὴδὲν τοιοῦτον ποιεῖν, ἀλλ' ἐπὶ τῇ τῆς δῆμῳ καὶ τῇ βουλῇ, καὶ

τοῖς ἰσομοῖς γινώσκειν· ἐπὶ δὲ αὐτῇ οἱ συνόντες σφίσι γράττωται ἐγκατελπίσας, τότε δὲ καὶ αὐτοὶ ὁμιλοῦνται, καὶ τὰ λοιπὰ ὅσα εἰς τὴν αὐταρχίαν ἤκουσαν, αὐτῇ ἐψηφίσαντο. Dio Cass. 60. 1. And again, τὰ μὲν ψηφισθέντα οἱ εὐδὺς πάντα, πληρὴ τῆς τοῦ πατρὸς ἐκπαινεύσεως, ἐδέξατο. Id. ib. 3.

¹⁷ Οὗτος τῇ μὲν ψυχῇ οὐ φανερὸς ἐγίνετο. Dio Cass. 60. 2.

¹⁸ Ὑπο τῶν ἐξελειδερῶν καὶ ὑπο τῶν γυναικῶν αἰς συνῆν, ἐκκεκρυπτο.—πολύς μὲν χρόνος τῇ τῆς Λιουΐας, πολλὰ

lence of his nature had one good consequence, to moderate his ambition, and to hinder him from becoming a tyrant¹⁹. The utmost extent of his views was to preserve the government in the same state in which he found it, and to prevent innovations; wherefore he readily forgave all those who had been active in their endeavours to revive the old republic²⁰. At times, however, when he was more master of himself, he would perform some actions worthy of applause²¹. He shewed great respect to the senate, and sometimes in conjunction with them, or with the consuls and prætors, and sometimes by himself, attended the courts, and saw that justice was faithfully administered²². When the consuls descended from their seats to address themselves to him, he paid them the compliment to rise and meet them²³: and if any senators happened to stand up for a longer time than usual, he himself would do the same,

πολυν τε και τη μητρι Αστια, τοις τε απελυ-
θροις συνδιατηδεις, και προστι και εν συνουσιαις
γυναικων ελαιοσι γυμνοιοι, ουδεν ελευθεροπρεπεις
εμικτητο. αλλα καιπερ και των Ρωμαιων απαντων
και των υπηκουον αυτων κρατων, εδιδουλετο. Dio
Cass. 60. 2.

¹⁹ "In femet augendo parvus atque ci-
vilis, prænominis Imperatoris abstinuit,
nimis honores recusavit." Suet. in Claud.
12.

²⁰ "Imperio stabilito, nihil antiquius
duxit, quam id biduum, quo de mutando
reip. statu hæsitatum erat, memorie exi-
mere. Omnium itaque factorum dicto-
rumque in eo veniam et oblivionem in
perpetuum sanxit ac præstitit." Id. ib.

11. Τοις αλλοις, οι της δημοκρατιας εφανα-
σκουδασαν, η και επιδοξοι ληφισθαι το κρατος εγι-
νοντο, ουχ' οσον εκ εμνησικακησειν, αλλα και τιμας
και αρχας εδωκεν. Dio Cass. 6. 3.

²² Ουκ ολιγα και των διορων επρατειν, οποτε εξω-
τε των προσηρημαιν παδων εγιγνετο, και εαυτη εκ-
ρατειν. Id. ib. 60. 3.

²² Καθ' ικαστην—ημεραν, ητοιγν μετα πασης της
γερονσιας, η και ιδια, το μιν πλειστον εν τη αγορα,
ηδη δε και αλλοθι, επι βηματος ιδικαζε. και γαρ το
κατα τους συνεδρους εκλειφθειν, εξ ου ο Τιβεριος εν της
ρησιν ελιχωρησιν, απηυσαστο. πολλας δε και τοις
υπατοις, τοις τε γρατηγοις, και μαλιστα τοις της
διοικησειν εχουσι, συνεζηταζετο, και ολιγα πατι-
λως τοις αλλοις δικαστηριος επιτετριπι. Dio Cass.
60. 4.

"Cognitionibus magistratuum, ut unus
e' consiliariis frequenter interfuit." Suet.
in Claud. 12.

"De majore negotio acturus, in curia
medius inter consulum fellas tribunitio
subsellio sedebat." Suet. ib. 23.

Εκρημοτο δε εν της συνεδρις, τυ τε Κλαυδω,
της επαρχων τε, και των εξελειδων αυτη παροντων.
της μιν γαρ εσηγησιν εν μιση των υπατων, επι διφρου
αρχικου η και επι βαδρι καθηματος, ετοιμτο μετα
δε τετο αυτος τε επι την συνεδη ιδραν μετηρχετο,
και εκεινους οι διφροι ετιδιντο. και ταυτα μιν και
επι των αλλων μεγαλην ομοιω εγγιγνετο. Dio Cass.
60. 16.

though:

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though a disorder by which he was afflicted might very well have excused that ceremony²⁴. It is plain, indeed, from the general tenor of his conduct, that he looked up to the senate, as the sovereign power of the whole state; and of this he gave one convincing proof, in obtaining a decree, to ratify a permission, already granted by himself, to certain persons of distinction to travel out of Italy; that he might not appear to dispense with the laws by his own personal authority²⁵. Many attempts were likewise made by him to improve the constitution, by reviving or reforming several antiquated laws, or by enacting new ones²⁶; and though the authors, who relate these instances of legislation, take no notice of his having acted therein by the advice of the senate; yet, from the account before given, there is no reason to suppose that he ever took any step of consequence without it.

Upon the whole, therefore, the Imperial power gained but very little ground during the reign of Claudius: for though the infirmities both of his body and mind made him fickle and uncertain in his motions²⁷, yet, in general, the affairs of government went on quietly and regularly: the people had few acts of violence or oppression to complain of, that could be charged to his particular account: and when it is remembered by whom he was succeeded, his death may justly be called a severe misfortune to the whole empire.

²³ Ταῦτα τι οὐν ἐπιεικὲς ἐπράττε, καὶ τῶν ὑπα-
ταῖν ἢ τῆ συνόδῳ καταβάντων ποτὶ ἀπὸ τῶν διφρω-
τῶν διαλυχθῆναι αὐτῶν, προσέξαπτε τι καὶ ἀντιπρο-
σέβη σφισιν. Dio Cass. 60. 6.

²⁴ Εἰ τῶ συνόδῳ αὐτοῦ μὴ ἐξαισῆτο, ἢ ποτὶ
ἐπὶ πολλοὺς ὅς αὐτοὺς ἐξηκισσάν. καθήμενος γὰρ ὑπὸ τῆς
ἀρχαίας, πολλὰκις ἀσχηρύνει τὴν αἰσχύνην. Id.
12.

²⁵ Τοὺς αὐτοματοῖς, ὥστε ἐξῆς τῆς Ἰταλίας ἀποδη-
μεῖν, ἐφίμει μὲν καὶ καθ' ἑαυτὸν ἀπὸ τῆς βουλῆς· τὴν
γὰρ μὴ καὶ νομῶν τῶν αὐτοῦ δοκεῖν ποιεῖν, δόγμα γενέσθαι
ἐκέλευε. Id. 60. 25.

²⁶ "Quædam circa ceremonias, civilem-
que et militarem morem, item circa om-
nium ordinum statum, domi forisque, aut
correxit, aut exoleta revocavit, aut etiam
nova instituit." Suet. in Claud. 22.

Ενομοδότησε μὲν οὐν καὶ ἀλλὰ τινα, ὧν οὐδεμία μοι
ἀλλῇ ἀναγὰρ μνημονεύεται εἶναι. Dio Cass. 60. 11.

²⁷ "In cognoscendo autem ac decernendo
mira varietate animi fuit, modo circum-
specius et sagax, modo inconsultus ac
præceps: nonnunquam frivolus amentis-
que similis." Suet. in Claud. 15.

Nero's first step to the Imperial throne was from the shoulders of the army. Being by them saluted Emperor, he was presented to the senate, who approved the choice; not forgetting the usual ceremonies and titles. All these he readily assumed, except that of "Pater Patriæ," which he modestly declined, on account of his youth, being as yet no more than seventeen years of age". The commencement of his reign flattered the people with the most auspicious hopes, that he would regulate his conduct by the example of Augustus, and neglect no opportunity of exerting the same liberality and clemency. In proof of the sincerity of his intentions, he lessened the burden of the public taxes", and would even have abolished them entirely, had not the senators remonstrated against such injudicious generosity; as by so doing, he would destroy those very funds by which the state was supported and protected". So tender was he of taking away life, that when obliged, according to form, to sign a warrant for the execution of a criminal, he wished himself ignorant of letters". But after all these fair professions, he chose Caligula for his chief pattern; whom he no sooner began to imitate, than he

CHAP.
V.
Nero,
A. D. 54.

"Septendecem natus annos—processit ad excubitores—proque palatii gradibus Imperator consalutatus, lectica in castra, et inde raptim appellatis militibus in curiam delatus est:—ex immensis, quibus cumulabatur, honoribus, tantum Patriæ nomine recusato propter ætatem." Suet. in Ner. 8.

"Illatus castris Nero, et congruentia temporis præfatus, promisso donativo, ad exemplum paternæ largitionis, Imperator consalutatur. Sententiam militum secuta Patrum consulta." Tac. Ann. 12. 69.

"Ut certiores adhuc indolem ostenderet, ex Augusti præscripto imperatorum se professus, neque liberalitatis, neque clementiæ, nec comitatis quidem exhiben-

da ullam occasionem omisit. Graviora vectigalia aut abolevit, aut minuit." Suet. in Ner. 10.

"Eodem anno crebris populi flagitationibus immodestiam publicanorum arguentis, debuit Nero, an cuncta vectigalia omitti juberet; idque pulcherrimum donum generi mortalium daret. Sed impetum ejus, multum prius laudata magnitudine animi, attinere senatores, dissolutionem imperii docendo, si fructus, quibus resp. sustineretur, deminuerentur." Tac. Ann. 13. 50.

"Cum de supplicio cujusdam capite damnati, ut ex more subscriberet, admoneretur, quam vellem, inquit, nescire literas." Suet. in Ner. 10.

N a

instantly

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instantly excelled; considering himself as much bound to outdo all mankind in wickedness, as he was their superior in station¹².

Finding the senate a restraint upon his arbitrary designs, he threatened to annihilate the order¹³, and therewith to have destroyed the tottering ruins of this once glorious empire. But, to draw a veil before such a disgusting scene of horror, as would arise from a nearer view of the life of this monster of barbarity, suffice it to say, that being grown hateful and intolerable, by an unremitting course of the most brutal enormities, he was forced to abandon the throne, and to seek for refuge, in suicide, from the just vengeance of his incensed people¹⁴. His name has ever since become a proverb of reproach, to stigmatize, with a peculiar brand of ignominy, such outrageous violators of the rights of human nature.

The tyranny of Nero had thrown the whole Roman world into a general convulsion, which not even his death could appease. It likewise gave birth to a new evil, and disclosed one fatal secret, that a prince might be appointed in other places, as well as in Rome¹⁵. The seditious and insolent humor of the soldiery, which had been long rankling in their hearts, began to display itself with every violent and malignant symptom that could alarm the apprehensions of a distempered constitution; reduced to this state of distraction and despondency, not so much by the ambition of those who were appointed its governors, as by the avarice and licentiousness

¹² Τίλος απηνδριασι, και παλα τα παραγγελ-
μια αυτων συγχιας και καταπαλησας, προς το
Γαϊον ειπεν. ως δ' απαξ ζηλωσαι αυτον επιδυμνησι,
και υπερβαλειοι νομιζων της αυτοκρατορικης και τουτ'
ισχυος εργον ειναι, το μηδε η τοις κακιστοις μηδανος
υστεριζων. Dio Cass. 61. 5.

¹³ "Multas nec dubias significationes
" sæpe jecit, ne reliquis quidem se parfurum
" senatoribus; eumque ordinem sublaturum
" quandoque e rep." Suet. in Ner. 37.

" Hæc persuasio," says Pliny to Trajan,
" superbissimis dominis erat, ut fibi vide-
" rentur principes esse definere, si quid
" facerent tanquam senatores." Plin. Pan.
63.

¹⁴ Suet. in Ner. 49.

¹⁵ "Evulgato imperii arcano, posse prin-
" cipem alibi quam Romæ fieri." Tac.
Hist. 1. 4.

of

of the army; who now introduced the pernicious practice of driving out one emperor by setting up another³⁶; inasmuch, that during the space of one year, no less than four stood forth in different provinces, in so rapid a course of succession, that they appeared like so many fictitious monarchs, acting their parts in the short and transitory scenes of a drama³⁷.

It seems to have been the general determination of the army, in more quarters of the empire than one, to declare against Nero, and to nominate other successors. Virginius, the general of some powerful legions in Gaul, was one of the first who was tempted with the insidious bait; but he strenuously asserted the right of the senate, and positively refused either to accept it himself, or to suffer it to be conferred on any other, without the consent of that body³⁸. Galba was at the head of the army in Spain; and, though far advanced in years, had yet several military qualities to recommend him to the notice of his fellow-soldiers, who unanimously proclaimed him emperor³⁹; and as such he was acknowledged by the senate and people, and invested with the accustomed honors and prerogatives⁴⁰.

This is the first instance of the Imperial dignity being removed from the Cæsaræan family⁴¹, to which it had hitherto been confined; not, indeed, by any act of the legislature, but by in-

³⁶ Οὐχ ὥς πο φιλαρχίας τῶν ἀναγορευομένων αὐτοκρατορῶν, ὡς φιλοπλῆτίας καὶ ἀκολασίας τῆ γραμμάτικῃ, δὲ ἀλλήλων, ὡς περ ἡλῶς, τὴν ἡγεμονίαν ἐκ πρώτης. Plut. in Gal. p. 369.

³⁷ Or, in the words of our great poet;

“Who strut and fret their hour upon the stage,

“And then are heard no more.”

Ἡ τρι Καισαρὶ ἱστία το παλαίον ἢ ἱλαστον χρόνῳ τισσάρας αὐτοκρατορας ὑπεδέξατο, τοῖ μιν ἱεραγοῖαν ὡς περ δια σκηπῆς, τοῖ δ' ἐξαγοῖαν. Plut. in Gal. 369.

³⁸ Οὐδὲν γὰρ δι ταγμαῶν ἐπιτάλῃ δυνατόταται,

πολλὰκις αὐτοῖ ἀναγορευοῦντο αὐτοκρατορα καὶ βιάζονται, ὅτε αὐτοῖς ἐφ' ἡλφισθαι τὴν ἡγεμονίαν, ὅτε ἀλλῶν περισφισθαι δεδομένη, ὅ αὖ μὴ ἡ συγκλητός ἴληται. Plut. in Gal. p. 373.

³⁹ Ὁ Βιρδίξ τοῖ Γαλβᾶν—ἐπιτιμία τῇ καὶ ἡμπερὶ πολέμων διαπρεποῖα, καὶ τῆς Ἰβηρίας ἀρχοῖα, δυναμὶς τε οὐ μικρὰν ἔχουσα, εἰς τὴν ἡγεμονίαν προεχειρισάτο· καίτοις ὑπο τῶν γεραιωτῶν αὐτοκρατορῶν ἀνηγορευθῇ. Dio Cass. 63. 23.

⁴⁰ Τῇ Γαλβᾶ τα τῇ αὐτοκρατορῇ ἀρχῇ προσήκουσα ἐψηφισάτο. Ib. 63. 29.

⁴¹ Ὁ Γαλβᾶς—πρῶτος μὲν το Αὐγούστῳ γυνὸς ἐκ τῶν ἀλλῶν Ῥωμαίων ἡμισαρχῶν. Ib. 56. 29.

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trigue or accident. From henceforth all ideas of hereditary succession seem to have been entirely exploded: for though, in after-ages, children not unfrequently succeeded their fathers, it was not in virtue of any right of blood, but in consequence of the special appointment of the reigning prince at his death; and more usually by associating a son, a nephew, or some other dependent, with himself during his own life. Considering the imperfect state of the constitution, this practice of supplying vacancies by anticipation was extremely wise and politic; and contributed to the prevention of many dangerous disputes: but in all these cases the senate, or army, as it happened, claimed the privilege of confirming the nomination.

Galba, on his promotion, behaved with great humility and condescension; affecting no higher title than that of Lieutenant of the Roman Senate and People⁴³. He exhorted Virginus to unite with himself in restoring and maintaining the public liberty⁴⁴; and modestly considered the empire, not as a prize of his own acquiring, but as a boon conferred upon him by his fellow-subjects⁴⁵; or rather as a dangerous eminence, which his fears forced him to occupy, more than his ambition prompted him to covet⁴⁶. Upon the whole, he might have been esteemed highly worthy of his dignity, had not his.

⁴³ "Consalutatus Imperator, *Legatus* se *senatus ac populi Romani* professus est."

"—Ac e primoribus prudentia atque ætate præstantibus, velut instar senatus, ad quos de majore re, quoties opus esset, referretur, instituit." Suet. in Gal. 10.

Ὁ δὲ ταύτην μὴ ἰσθὺς ὡς προσεδέξατο τῇ προσηγορίᾳ (sc. αυτοκράτορος)—ὑμολογήσει ἐπιδώσειν τῇ πατρίδι τὴν ἑαυτοῦ προσηγορίαν, ὡς Καίσαρος, ὡς αυτοκράτορος, ἑξῆς τοῦ δὲ συγγραφέως καὶ ὁμοῦ Ῥωμαίων ὀνομαζομένων. Plut. in Gal. p. 372.

⁴⁴ Ἐγχαρὶ τῇ Οὐιργίνιᾳ, παρακαλῶν ποινοπράγειν καὶ διαφυλάσσειν αἶμα τὴν ἡγήμοναν καὶ τὴν εὐδαιμονίαν Ῥωμαίων. Id. 373.

⁴⁵ Ἀδελφὸς δὲ τῶν Ῥωμαίων ἀλλὰ μετρίως ἡγήσῃ, καὶ ἀπο-

παχθῇ τοῖς Ῥωμαίοις ὡς εὐλαβῶναι τὴν ἀρχὴν, ἀλλὰ δίδωδαι αὐτῇ. Dio Cass. 64. 2.

⁴⁶ "Supervenerunt vindicis literæ hortantis (Galbam) ut humano generi assertorem ducemque se accommodaret. Nec diu cunctatus, conditionem partim metu, partim spe recepit." Suet. in Gal. 9.

And in his speech to Piso, upon his adoption of him, he thus speaks of himself; "Sed neque ipse imperium ambitione accepi." Tac. Hist. 1. 15. And a little further; "Nunc eo necessitatis jampridem ventum est, ut nos mea senectus conferre plus populo Romano possit, quam bonum successorem; nec tua plus juvenia, quam bonum principem." Id. ib. 16.

very exaltation betrayed his unfitness⁴⁶. Though not disposed to violence or injustice himself, he connived at the commission of them in others; or, what is equally reprehensible in a prince, lived in profound ignorance of what was doing under his authority, by his ministers and favorites; the chief of whom, Titus Vinnius, by his daily misconduct, brought a scandal upon the administration, and defeated all the good designs of his better-inclined master⁴⁷. Galba's own avaricious disposition, likewise, and severity of temper, put him upon various plans of reformation, very ill suited to the licentious turn of the age; gave a general disgust to the army; and provoked them to dispatch him, with as little ceremony as they first advanced him.

This bloody catastrophe, though beheld with a frantic joy by a fickle populace, only multiplied their distractions, and aggravated their miseries. It inspired the other competitors with fresh hopes, and nearer views; and exposed the public to the insults of two of the most abandoned and profligate wretches in the world⁴⁸. The senate, too weak to resist the overbearing clamors of a riotous army, was obliged to temporise; and to compliment them with the same honorable marks of distinction, which custom had now made necessary on every new accession⁴⁹.

⁴⁶ "Omnia. consensu capax imperii, nisi imperasset." Tac. Hist. 1. 49.

⁴⁷ "Ο δὲ πρῶτος ἐλαίω, τὰ μὲν πρῶτα τῷ Οὐένῳ κακῶς διακονῶν, αἱ δὲ αὐτοῦ οὐδὲν προσηύδα διαβολῆς, ἢ κωλυσθεῖς. Plut. in Gal. p. 384. "Ὅστ' ἢ καὶ ἐξ αὐτοῦ τὸ δῶρον πομπῇ ὁ Γαλβὰς πρὸς ἀλλ' ὅτι ἐκείνους ἀδικίᾳ ἐκτρέφει, ἢ ὅτι ἤγνοι τὰ γινόμενα, οὐ καλῶς κενόν. Dio Cass. 64. 2.

⁴⁸ "Tum duos omnium mortalium impudicitia, ignavia, luxuria deterrimos, velut ad perdendum imperium fataliter electos, non senatus modo et eques, quis aliqua pars et cura reip. sed vulgus quoque palam mœrere." Tac. Hist. 1.

⁴⁹ Under Otho, says the same historian,

"Omnia arbitrio militum acta. IB. 1. 46.

⁴⁷ "Exacto per scelera die, novissimum malorum fuit lætitia. Vocat senatum Prætor Urbanus. Certant adulationibus cæteri magistratus. Accurrunt patres, decernitur Othoni tribunitia potestas et nomen Augusti, at omnes principum honores." Ib. 1. 47. "Ἡ μὲντοι βουλή πάντα

τα πρὸς τὴν ἀρχὴν φερόμενα ἀνέφικατο. Dio Cass. 64. 8. "In senatu, cuncta longis aliorum principatibus composita, statim decernuntur." (sc. Vitellio) Tac. Hist. 2. 55.

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Otho,
A. D. 69.

Otho had not the spirit boldly to avow his usurpation; but he pretended to have been forced into the throne by the army, whose importunities he could not resist, without extreme hazard of his life. He began with much apparent moderation, and many fair promises; though it was easy to foresee, that his reign would be more cruel than that of Nero, whose name was given to him by the servile multitude⁵⁰. This reproachful addition, which must have raised horror in every mind, not totally lost to all feelings of human kindness, he received with many signal marks of approbation; by using it in his letters; by replacing the statues of that execrable tyrant; and by recalling and careffing those who had been most in his favor. But what rendered Otho still more universally detestable was, that he had made the empire a mere venal office; and the city a prey to the outrages and rapine of the vilest of mankind: treating the senate and people with the highest degree of contempt; and flattering the foldiers into a notion, that they had a right of creating and murdering the emperor at their own pleasure⁵¹.

Having no claim to the affections of the Romans, the first appearance of his competitor, at the head of a formidable army, admonished him that his power was hastening to a conclusion. But,

⁵⁰ Βεβιωθαι μιν, και ες το τυχος απαν εσηχθαι, κηλευσθαι αυταγων, κικινδυνησθαι ελεγε. και τα τε αλλα επιμικας εφθιγγελο, και τη υποκρισει του σχηματος εμβριαζε⁵² φιλημαζα τε ως εκατος δια των δακτυλων επιμπε, και υποσχρηστο πολλοι ουκ ελανθον δι, ως και ασυλγεστοι και πικροτεροι τε Νερωνος ερξιν εμιλλει. το γ' ουι ονομα αυτου αυτω ευδης επιδιτο. Dio Cass. 64. 8. "Ingressus senatum, positaque brevi ratione, quasi raptus de publico, et suscipere imperium vi coactus, gesturusque communi omnium arbitrio, palatium petit. Ac super ceteras gratulantium adulantiumque blanditias, ac infima plebe appellatus NERO, nullum indicium recusantis dedit: imo, ut qui-

dam tradiderunt, etiam diplomatibus pri-
misque epistolis suis ad quosdam provinciarum principes, Neronis cognomen adjecit. Certe et imagines statuasque ejus reponi passus est, et procuratores atque libertos ad eadem officia revocavit." Suet. in Oth. 7. "Creditus est etiam de celebranda Neronis memoria agitavisse, spe vulgum alliciendi." Tac. Hist. 1. 78.

⁵¹ Μαλιστα δε αυτου εμισεν, ετι την τι αρχησιν οποιεσιν αποδιδουσι, και την πολιν επι τοις δρασυστοις επιποινησει και την μει βουλην και τον δημον παρ' ευδης ηγει, τους δε γραβητας επημικει και τουδ', ετι αποκινειται Καισαρ και ποιησιν δυναται. Dio Cass. 64. 9.

strange

strange as it may appear, he took no other step to avoid the danger, than by declining to meet his antagonist in the field of battle. Making a virtue of necessity, he affected to be unable to bear the sight of his fellow-citizens streaming with each others blood; he would therefore now give them the most indubitable proof of his love of his country; and convince them of the propriety of having made choice of him for their ruler; by devoting himself a willing victim to the public welfare and tranquillity⁵³. Thus resolved, he put an end to the competition for empire, by a calm and determined act of self-violence, which the false philosophy of a pagan age has magnified into heroism; and transmitted to posterity as the only meritorious circumstance of his whole life⁵⁴.

Every vice that could most degrade human nature, and assimilate a rational being to a mere brute, was centered in Vitellius⁵⁵. But the spirit of the Roman people was now sunk to so low a state of degeneracy, that their applause or censure, their love or hatred, were entirely governed by the good or ill fortune of their respective objects⁵⁶. No sooner was he in full possession of power, but, as if

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V.

Vitellius,
A. D. 69.

⁵³ 'Ο δὲ Ὀδων ἀσχημέσας ἐκ τῆς μάχης, λυγρὴν μὴ δύνασθαι μάχην ἀνδρῶν ὁμοφυλῶν ἰδὼν. Dio Cass. 64. 10. And again, in his own words, Μισῶ πολέμους ἐμφυλούς, καὶ πρῶτον φίλων πατρίδας Ῥωμαίους, καὶ μὴ ὁμολογῶσι μοι: ἡκατέρω Βιτέλλιος, ἐπὶ τούτῳ τοῖς θύοις ἰδοῦσι.—πολύ γὰρ πόνος καὶ κριτῶν καὶ δικαιοτέρων ἔστιν, ἵνα ὑπὲρ πάντων, ἡ πολλοὺς ὑπὲρ ἑνὸς ἀπολέσθαι.—εὖ γὰρ δ' αὖτος ἐμὰς ἐλευθερίων, ὅπως καὶ τῶ ἔργῳ ἀπάσης ἀνδρῶν ποιμαίνωσιν, ὅτι τοιοῦτοι αὐτοκράτορες εἰσεσθῆ, ὅτις οὐχ ὑμᾶς ὑπὲρ ἑαυτοῦ, ἀλλ' ἑαυτοὺς ὑπὲρ ὅρων δίδωκε. Id. ib. 13.

⁵⁴ Τούτῳ το τῆς τοῦ Ὀδων ἐργῆς.—κακίσα γὰρ μὴ ἀνδρῶν ζῆσας, καλλίστα ἀπεθῆναι καὶ κακουγυτάτα τῇ ἀρχῇ ἀρπάζας, ἀμείβαντο αὐτῆς ἀπὸ πᾶσιν. Dio Cass. 64. 15. "Magna pars hominum, incolumem gravissime detestata, mor-

"tuum laudibus tulit." Suet. in Oth. 12.

⁵⁴ Αὐτὸς δὲ τῇ τε τρυφῇ καὶ τῇ ἀσελγείᾳ προσημιμένος, οὐδὲν ἔτι τῶν ἄλλων οὐδὲ τῶν ἀνδραγαθῶν οὐδὲ τῶν θειῶν ἐφροντίζεν. ἡ μὲν γὰρ καὶ ἀπ' ἀρχῆς τοιοῦτος. Dio Cass. 65. 2. "Sequenti ætate omnibus probris contaminatus." Suet. in Vit. 4.

⁵⁵ 'Οἱ δ' ἐν τῇ Ῥώμῃ, ὡς ἤκουσαν τοῦ τοῦ Ὀδωνος πάθος, παραχρῆμα, ὥσπερ ἱκός τις, μὴ καταλλήλου τοι τε γὰρ Ὀδων, ἐν προτέρῳ ἐπὶ πᾶσι καὶ κατὰ πυχρόν, εὐλοδοῦντες ὡς πολέμους, καὶ τοὺς Βιτέλλιος, ὡς κατήρητο, καὶ ἐπὶ πᾶσι καὶ αὐτοκράτορας ἀνηγορεύοντες. οὐδὲν πᾶσι ἐπὶ τῶν ἀνδραγαθῶν ἀλλ' ὁμοίως ἐπὶ τῇ ἐν ταῖς μάχαις ἀνδουσίᾳ, καὶ ἐν τῇ ταπεινότητι οἷς, ἀσάδμητα τε αἰρουμέναι, καὶ πρὸς τὰς τυχεὰς σφῶν, καὶ τοὺς σπαινοὺς καὶ τοὺς ψογούς, τὰς τε τιμὰς καὶ τὰς ἀτιμὰς λαμβάνουσι. Dio Cass. 65. 1.

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III

he had at once changed his nature, he was received with the loudest acclamations, and dignified with titles and honors, which seemed only to render his demerits more conspicuous. His reign was fortunate in nothing but in the shortness of its duration, being a continued scene of profligacy, cruelty, and despotism; and his death was not more ignominious than his crimes deserved⁵⁶.

It is difficult to conceive how a state, sinking under the oppressions of such an uninterrupted succession of tyrants, could have preserved any thing like an union of her numerous and distant members; or indeed have existed under any form whatever. But a firm and vigorous habit, acquired in her earlier years, though much impaired by her own irregularity and intemperance, was not yet so far exhausted, as to leave her without hopes of a final recovery. She has, therefore, been very significantly compared to the fabulous heavens assaulted by the Titans; frequently discomfited, and in imminent danger of being overwhelmed by these audacious invaders; but still endued with a sufficient portion of native prowess to repel these rude attacks, and to regain her primitive force and stability⁵⁷.

The fortune of Rome, as already observed, had been laying the foundations, and preparing the way to empire, in divers regions of the world at the same instant; which was attended with various, and very opposite, consequences, as well to the public, as to the princes themselves; according to the different circumstances wherewith these events were accompanied.⁵⁸ The legions, every where supreme in

⁵⁶ Suet. in Vitel. 17. Tac. Hist. 3. 85
Dio Cass. 65. 20 & 24.

⁵⁷ Τῇ Ῥωμαίων ἡγεμονίᾳ ὅμοια τοῖς λεγομένοις
Τίτανες, παρὶς καὶ κινήσει παταλῶσαν, οὐ
πολλὰ διασπασμένη ἀλλὰ καὶ πολλαχῶς αὐτῆς ἑαυτῇ
συνεκταμένη. Plut. in Galb. 369.

⁵⁸ "Statuebat jam fortuna, in diversa
" parte terrarum, initia causasque imperio:
" quod varie ortum, lætum reipublicæ aut
" atrox, ipsis principibus prosperum, aut
" exitio fuit." Tac. Hist. 2. 1.

their own ideas, began now to claim a right of disposing of this valuable prize, without consulting the inclination of their fellows in the other provinces". In virtue of this assumed authority, part of the army, then in Judea, having conspired together to elect an emperor of their own, fixed their choice upon Vespasian, the general⁶⁰; whose approved valour, benevolent temper, and upright character, had engaged their affections; though far from being ambitious of the office, and extremely unwilling to involve himself in the troubles in which the state was then embroiled⁶¹.

This venerable prince accepted his new honors with the utmost calmness and humility; and, without appearing as a novice in the exercise of his power⁶², by prudence and moderation soon restored tranquillity to the whole empire⁶³. Upon the death of Vitellius, the senate ratified the choice of the army⁶⁴; and, in certain and joyful hope of seeing a speedy determination of their miseries, by a very full and ample decree, confirmed him in the

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V.

Vespasian,
A. D. 69.

⁶⁰ "Cuncta impetu militum acta: non parata cognitione, non conjunctis legionibus." Tac. Hist. 2. 79.

⁶¹ "Mæsiaci exercitus bina e tribus legionibus millia,—consilium inierunt eligendi creandique Imperatoris.—Propositis itaque nominibus legatorum consularium, quot ubique tunc erant, cum cæteros alii alium alia de causâ improbarent.—Vespasianum laudibus ferrent: assensere cuncti, nomenque ejus vexillis omnibus sine mora inscripserunt." Suet. in Vesp. 6.—"Egressum cubiculo Vespasianum pauci milites solito adstant ordine, ut legatum salutaturi, imperatorem salutaverunt. Tum cæteri, accurrere, Cæsarem, et Augustum, et omnia principatus vocabula cumulare." Tac. Hist. 2. 80.

⁶² Ην μὲν γὰρ ὁ Οὐισπασιανὸς οὐτ' ἄλλως προ-
πιτῆς, καὶ ἰς ταραχὴν ὄντι πρᾶγμα καὶ παν-
ῶντες ἰαυτοὶ καθύπευθε. ἀλλ' ἡ τε τῶν ἀνδρῶν εὐνοία
πολλὴ καὶ πρὸς αὐτόν, (ἡ γὰρ ἐκ τῆς Βρετανίας δοξα,

καὶ ἡ ἐκ τοῦ ἐν χερσὶ πολέμου σκελετοῦ, το, τὶ ἐπὶ τῆς
καὶ φρονίμοι αὐτοῦ, πρὸς ἐκιδυμῶν σφας καὶ τῆς
καρ' αὐτῶν προτάσεις.)—αἰσδομένοι δὲ δι' ἐρασίαν
τοῦτον, καὶ περὶ αὐτῆς τῆς σκεπῆς αὐτοῦ, ἀπὸ τοῦ αὐτοῦ
αὐτοκρατορῶν. Dio Cass. 65. 8.

⁶³ "In ipso nihil tumidum, arrogans, aut in rebus novis novum fuit." Tac. Hist. 2. 80.

⁶⁴ "Rebellionem trium principum, et cæde, incertum diu, et quasi vagum imperium suscepit, firmavitque gens Flavia." Suet. in Vesp. 1. The same historian, speaking of him in another place, says, "Per totum imperii tempus nihil habuit antiquius, quam pœpe afflictam, nutantemque remp. stabilire primo, deinde et ornare." Ib. 8. "Cæteris in rebus statim ab initio principatus usque ad exitum civilis et clemens." Ib. 12.

⁶⁵ Ταῦτα μὲν ὅντως ἔσχεν· αὐτοκράτωρ δ' ἐπ' αὐτοῖς
ὁ Οὐισπασιανὸς καὶ πρὸς τῆς βουλῆς ἀπιδειχθε-
Dio Cass. 66. 1.

* Q o

possession

possession of every privilege which had usually been granted to his predecessors⁶⁵. This decree has been generally considered as nothing more than a ratification of the famous *Lex Regia*⁶⁶, supposed to have been originally enacted in favour of Augustus; the true nature and extent of which, being a point of great moment in the constitutional history of the Roman people, will be the subject of our particular inquiry in a future chapter.

In the mean while it should be remembered, that Vespasian, to shew himself worthy of the confidence reposed in him, labored with the utmost assiduity to reform those abuses, which had arisen from the violence of former reigns. One of his first attempts was to restore the antient laws, by collecting all the fragments of the old tables, which had escaped the late general conflagration⁶⁷, and to revive and enforce their authority. He likewise rectified the numerous disorders which, from the confusions of the times, had crept into the courts of law; abridged the forms of judicial proceedings⁶⁸; and often administered justice in his own person⁶⁹.

⁶⁵ "Senatus cuncta principibus solita Vespasiano decrevit, latus et spei certus." Tac. Hist. 4. 3.

⁶⁶ This law was engraved upon copper; and being found, in the last century, among the ruins of the capitol, where it was first set up, is now preserved in the Lateran palace. The authenticity is not to be doubted; and, as it throws so true a light upon the present subject, it deserves to be perused with the greatest attention; but, having been transcribed and reprinted in such a variety of modern writers, need not here be repeated. V. Grut. Inscript. p. 242. Grav. de Imp. Rom. 24. Taylor, de Lege Regia, cum multis aliis. It may be presumed that this was not the first of the kind; but it is most likely that all the former ones were destroyed, in the general conflagration of the city by Nero.

⁶⁷ "Ærearum tabularum tria millia, quæ

simul conflagraverant, restituenda suscepit, undique investigatis exemplaribus, instrumentum imperii pulcherrimum ac vetustissimum: quo continebantur pæne ab exordio urbis senatusconsulta, plebiscita de societate et fœdere ac privilegio cuicunque concessis." Suet. in Vesp. 8.

⁶⁸ "Litium series ubique majorem in modum excreverant, manentibus antiquis, intercapedine jurisdictionis, accedentibus novis, ex conditione tumultuque temporum. Sorte elegit per quos rapta bello restituerentur; quique judicia centumviralia, quibus peragendis vix suffectura litigantium ætas videbatur, extra ordinem dijudicarent, redigerentque ad brevissimum numerum." Suet. in Vesp. 10.

⁶⁹ Εἰ τῇ ἀγορᾷ πολλάκι; ἐδικάζει. Dio Cass. 66. 10.

From

From the earliest date of the imperial power, the senate had always shewn too mean an attachment even to the best princes; though several particular examples of true wisdom and patriotism had existed in the persons of individuals. But virtues like these had little hopes of any favorable reception in the vicious courts of Caligula or Nero; consequently, both the desire and ability of resistance declined, in proportion as the corruption of the age increased. The spirit of independence, which had been the antient glory of that august order, was succeeded by the most abject servility; and, instead of being a check upon the encroachments of a lawless despot, they now were become the base instruments of his tyranny. So great a part, therefore, being unqualified for that important station; and many of the rest having fallen victims to the fury of civil war; the temperate zeal of Vespasian undertook to restore that once important body to its original use, by purging it of those members, whose vices had disgraced its institution; and by supplying their vacancies with the worthiest that the degeneracy of the times would afford⁷⁰. To give them honor in the sight of the people, and to shew his sense of their consequence, he submitted all questions of moment to their decision; either proposing them in person, or, when necessarily absent, by his sons: and thus he strengthened his own authority, by a firm union with an acknowledged branch of the antient constitution⁷¹.

With all these virtues, however, he is accused of some failings, particularly that of avarice⁷²; a vice, of all others, the most unbecoming,

⁷⁰ "Ampliffimos ordines, et exhaustos cæde varia, et contaminatos veteri negligentia, purgavit: supplevitque recensito senatu et equite: summotis indignissimis, et honestissimo quoque Italicorum ac provinciarum allecfo." Suet. in Vesp. 9.

ἵνα αὐτοὶ επικρατοῦν.—ὅσα τε μὴ δύνατο αὐτοὶ ὑπο-
τε γῆρας ἀναλεγεσθαι, ἢ καὶ ὅσα αὐτοὶ ἐπετελλο-
τῇ βουλῇ, διὰ τῶν υἱῶν αὐτοῦ ὡς το πολὺ ἐκτελεῖται ἀν-
τιπροσκεισθαι, τιμῶν καὶ τούτῃ αὐτῇ. Dio Cass. 66. 10.

⁷¹ "Vespasianus acer militiæ, anteire ag-
men, locum castris capere, noctu diuque
confilio,

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coming, and incompatible with, the character of a sovereign prince; and of course the most likely to render him the object of popular censure. But upon a fair and candid examination of the grounds whereon this accusation is built, it seems to have arisen chiefly from a simplicity of manners, a plainness of appearance, and a contempt of every expence that centered only in himself: and, after all, was, probably, no more than the effect of mere habit; though easily converted into a fault by the prejudices of a luxurious and extravagant age; which is very apt to mistake prudence for covetousness, and profusion for generosity. This opinion is fully justified by the same writers, who have recorded his blemishes with great freedom and impartiality; and have, at the same time, carried their complaisance much too far, in palliating even his rapines and extortions, under the pretence of the necessities of the state, and of his subsequent application of these ill-gotten treasures to many public and beneficial uses⁷³. But they in general acknowledge, that, though he spent but little upon himself, he was extremely bountiful, both to the public⁷⁴, and to all others in distress: that he supported those of consular rank, who were in a state of indigence, with ample annuities: that he relieved many cities in divers parts of the empire, which had suffered by

“ consilio, ac si res posceret, manu hostibus
“ obniti, cibo fortuito, veste habituque vix
“ a gregario milite discrepans, prorsus, si
“ *avaritia* abesset, antiquis ducibus par.”
Tac. Hist. 2. 5. “ Sola est, in qua meritò
“ culpetur, pecuniæ cupiditas.—Quidam
“ *natura* cupidissimum tradunt.” Suet. in
Vesp. 16.

⁷³ “ Sunt qui opinentur, ad manubias et
“ rapinas necessitate compulsam, summa
“ ærarii fisci que inopia; de qua testificatus
“ sit initio statim principatus: professus

“ *quadringentis* millies opus esse, ut *republica*
“ *stare* posset. Quod et verisimilius videtur,
“ quando et male partis optime usus est.”
Suet. in Vesp. 16.

⁷⁴ Μεγαλοφροσύνην δ' αὖ πάλι καὶ τοῦ κοινῶν ὅσα
ἐχρην ἀναλωσας, καὶ τὰς πανηγυρικοὺς πολὺς δαδίους
διαδούς, ἐντελέσθαι δηλοῦτο, καὶ οὐδὲν ἔξω τῶν παντο
ἀναγκαίων ἰδαπανᾶν.—καὶ ταῦτα καὶ τὰ μακρὰ
δεδίδου, ὅτι τὰς συλλογὰς τῶν χρημάτων οὐκ εἰς τὰς
ἑαυτοῦ ἡδονὰς, ἀλλ' εἰς τὰς τοῦ δήμου χρείας ἐκένειτο.
Dio Cass. 66. 10.

fires and earthquakes⁷⁵; and that he cherished genius, and encouraged the liberal arts with the most unbounded munificence⁷⁶.

Upon the whole, after a fair and unprejudiced review of the political conduct of Vespasian, his aim seems to have been, to bring back the government to the footing on which it was placed by Augustus; that is, to a monarchy originating in the appointment of the senate, and, in many instances, subject to its control: reserving to himself, indeed, the supreme executive power, together with the precedence naturally adhering to the imperial character: but, in all matters of a private concern, condescending to the same level with the rest of his fellow-citizens⁷⁷. It is remarkable, likewise, that, when once in firm possession of the throne, the storms, with which the whole empire had been so long and so violently agitated, subsided into a state of profound tranquillity, without the least complaints of any acts of oppression on his part, or of sedition on the part of the people; and that, after a peaceable and happy reign of several years, he died in an advanced age, in the actual discharge of his duty⁷⁸; and transmitted his honors to his posterity: facts, which carry with them a signal and convincing argument of the general wisdom and lenity of his administration.

⁷⁵ "In omne hominum genus liberalissimus: explevit censum senatorium: consulares inopes quingentis sestertiis annuis sustentavit: plurimas per totum orbem civitates terræ motu aut incendio afflictas, restituit in melius." Suet. in Vesp. 17.

⁷⁶ "Ingenia et artes vel maxime fovit." Id. ib. 18.

⁷⁷ Το, τι σωματι, τη προσηνεια των κοινων, αυλοκρατορικοις εως δε διη τ' αλλα παρτα κοινος και ισοδουλος σφισιν. Dio Cass. 66. 11.

⁷⁸ The circumstances of his death are thus recorded by a contemporary historian: "Cum

"super urgentem valetudinem creberrimam frigidæ aquæ usu etiam intestina vitiasset: nec eo minus muneribus imperatoris ex consuetudine fungeretur, ut etiam legationes audiret cubans, alvo repente usque ad defectionem soluta, Imperatorem, ait, stantem mori oportere. Dumque confurget, ac nititur, inter manus sublevantium extinctus est." Suet. in Vesp. 24. Των διατρων επιμενησαν αυτη, οτι τη τε αλλη διατρη ομοια ιουσαν ιχνηλο, και παρτα τα προσηνεια τη αρχη πραττε, "Τον αυλοκρατορα διη, εφ'ε, ισουα αποδιν: σχην." Dio Cass. 66. 17.

Titus had been admitted to a share of the government, and had executed many of the peculiar functions of the imperial office, in the life-time of his father⁷⁹. In his early days, however, he had been guilty of various acts of cruelty and violence; and had displayed so strong a propensity to rapine and debauchery, that the public voice pronounced him another Nero⁸⁰; and expressed the most anxious apprehensions at his accession to the throne. But this event wrought a total change in his nature, and set forth the latent virtues of his heart in their true colors; insomuch that, instead of the object of universal dread and detestation, he became, in one instant, the *delight of mankind*⁸¹. As a specimen of the sincerity of his reformation, he imposed upon himself the rigid task of parting from the dearest object of his affections, whom he immediately dismissed

⁷⁹ "Neque ex eo defecit participem, atque etiam tutorem imperii agere. Triumphavit cum patre, censuramque gessit una. Eidem collega et in tribunitia potestate, et in septem consulatibus fuit. Receptaque ad se prope omnium officiorum cura, cum patris nomine et epistolas ipse dictaret, et edicta conscriberet." Suet. in Tit. 6.

⁸⁰ "Quando privatus, atque etiam sub patre principe, ne odio quidem, nedum vituperatione publica caruit." Suet. in Tit. 1. "Egit aliquanto incivilius et violentius: siquidem suspectissimum quemque filii, submissis qui per theatra et castra, quasi consensu ad poenam deposcerent, haud cunctanter oppressit. In his A. Cæcinam consularem virum, vocavit ad cenam, ac vix dum triclinio egressum, confodi iussit." Id. ib. 6. "Præter sævitiam, suspecta in eo etiam luxuria erat, quod ad mediam noctem commissiones cum profusissimo quoque familiarium extenderet. Nec minus libidō, propter exoletorum et spadonum greges, propterque insignem reginæ Berenices amorem, cui etiam nuptias pollicitus ferebatur. Sus-

pecta et rapacitas, quod constabat in cognitionibus patris nundinari præmiarique solitum. Denique propalam alium Nerōnem et opinabantur et prædicabant." Id. ib. 7.

⁸¹ "Titus, cognomine paterno, amor ac delicia generis humani." Suet. in Tit. 1. "At illi ea fama pro bono cessit, conversaque est in maximas laudes: neque ullo vitio reperto, et contra virtutibus summis." Id. ib. 7. Ὁ δὲ δὴ Τίτος οὐδὲν οὐκ ᾔσκειτο, ὡς ἱπποκοί, μεταρρησας ἐπράξεν, ἀλλὰ χρηστὸς, καὶ πᾶσι συμβουλευθεὶς, καὶ σωφρων, καὶ οὐκ ἀπὸ τῆς Βερνίκης ἐς Ῥώμην αὐδὲς ἐλθούσης, ἐγγύσω. ταχὺ μὲν γὰρ, ὅτι καὶ μετὰ αὐτὸν. Dio Cass. 66. 18. In many circumstances of this prince's character is to be found a striking resemblance to the hero of Agincourt in later times; who, by a long course of dissipation and profligacy, having given a just alarm to all the peaceable and virtuous part of his subjects, on his coming to the crown, instantly

converted their fears

"By number into hours of happiness;
"And mocked the expectations of the
"world." Shakesp.

from

from Rome³³, and from thenceforward devoted himself wholly to the business of government; anticipating the wishes of his subjects; by unsolicited indulgences³⁴; and declaring every day lost, that was not signalized by some instance of benevolence³⁵.

As an object of the highest consequence to the happiness of his people, Titus was peculiarly delicate in the choice of his friends and ministers; preferring such only as were most distinguished by their political abilities, and whose eminent qualities made them equally necessary to the public, himself; and successors³⁶. The senators, who had been the first victims of the jealousy and vengeance of preceding tyrants, now enjoyed their lives and privileges in perfect security; neither did any inferior citizens fall by the hand of the executioner, during the whole of his reign. Inquisition for treason against his own person he neither made himself, nor would suffer to be made by others; relying upon the purity of his own intentions; nor conceiving it possible for any one to offer him an injury, while he studiously avoided every occasion of offence; and conscious of doing nothing worthy of reprehension, he treated falsehood and calumny with a generous contempt³⁷. Such purity of

³³ "Berenicen statim ab urbe dimisit, in-
"vitus invitam." Suet in Tit. 7.

³⁴ "Natura autem benevolentissimus, cum
"ex instituto Tiberii omnes dehinc Cæsares
"beneficia a superioribus concessa principi-
"bus, aliter rata non haberent, quam si
"eadem iisdem et ipsi dedissent: primus
"præterita omnia uno confirmavit edicto,
"nec a se peti passus est." Id. ib. 8.

Πωλλὰ δὲ καὶ ἄλλα πρὸς τὴν τοῦ ἀσφαλεῖς καὶ πρὸς
τοῦ ἀλποῦ τοῦ ἀνδρὸς καὶ καλὴν οὐσίαν, καὶ γὰρ γραμ-
μαὶ ἐξέδωκε, βιβλίων πάλιν τὰ ὑπὸ τῶν πρὸ τούτου
ἀπολομένων δωρεάν, ὥστε μὴ κατ' ἐκαστοῦ σφύ-
ραισθαι αὐτοῦ πρᾶγμα ἰσχυρὸν. Dio Cass. 66:
19.

³⁵ "Recordatus quondam super cœnam,

"quod nihil cuiquam toto die præstitisset,
"memorabilem illam meritoque laudatam
"vocem edidit; *Amici, diem perdididi.*" Suet.
in Tit. 8.

³⁶ "Amicos elegit, quibus etiã post
"eam principes, ut sibi et reipublicæ ne-
"cessariis, acquieverunt, præcipuèque usi
"sunt." Id. ib. 7.

³⁷ Οὐ μὴ ἀλλ' ὁ Τίτος οὐδὲν τῶν βελούτων τῆς
αὐτοῦ ἡγεμονίας ἀπεκρίνεται, ἀλλ' οὐδὲ ἄλλος τις αὐτοῦ
ἐπὶ τῆς αὐτοῦ ἀρχῆς ἐπαυτοῦ. τὰς τε δικὰς τὰς
τῆς μετρίας οὐκ αὐτοῦ πρὸς ἐξέτασιν, οὐτ' ἄλλοις ἐπι-
τρέψας λέγειν ὅτι, "Ἐγὼ μὴ οὐδὲ οὐδ' ὕβρισθαι,
"οὐδὲ προπηλακισθῆναι δύναμαι. οὐδὲ γὰρ ἀξίον τι
"ἐπιγορίας ποιεῖν, οὐδὲ μοι μὴ τῶν ψευδῶς λεγομένων
"ἔστιν." Dio Cass. 66: 19.

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sentiment may, perhaps, argue rather a want of knowledge of human nature; but it certainly does great credit to the integrity of his heart. Not that he was insensible to the fatal mischiefs brought upon society at large by these pernicious vices, though he despised them as far as they concerned himself; but well knowing how much the repose of the innocent was disturbed, and the transgressions of the guilty were aggravated, by the malicious accusations of informers, a swarm of pestilential vermin, generated from the corruption and tyranny of the late unhappy times; he punished them with scourging, slavery, or banishment, as the atrociousness of their crimes deserved²⁷.

An eminent, and generally very judicious, historian has thought proper to ascribe these virtues of Titus to his want of time to be a tyrant, rather than to want of inclination. He mentions it likewise, as the current opinion of the world, that, upon a comparison of his character with that of Augustus, the latter was indebted, for the high share of public esteem which he enjoyed, to the length of his reign, the former, to the shortness of it. That the longevity of Augustus supplied him with the happy opportunity of atoning, by a future course of mercy and benevolence, for the numerous acts of cruelty and injustice, into which he had been hurried in his younger days, by the distractions of the times; whereas Titus, having set out with a bright display of clemency and goodness, was soon snatched away in the flower of manhood, and the height of glory: but had he lived to a longer period, he might have proved, in the end, more fortunate than virtuous²⁸.

Such

²⁷ Τους μνηστὰς ἐξήλασεν ἐκ τῆς πόλεως. Dio Cass. 66. 19. "Inter adversa temporum, et delatores mandatoresque erant ex licentia veteri. Hos assidue in foro flagellis ac fustibus caesos, ac novissime traductos per

" amphitheatri arenam, partim subjici, ac vixitro imperavit; partim in asperitimas insularum avehi." Suet. in Tit. 8.

²⁸ Ἦδη δὲ καὶ ἐπὶ τοῖς βραχυστάτοις, οἷς γὰρ ἐς ἡγεμονίας ἤπιον, ἐπέβη, ὥστε μὴδ' ἀμαρτίας τινα αὐτῷ ὑγγνωσθαι.

Such reflexions, indeed, might naturally occur to a people, whose hopes of better days, on the change of their governors, had been so often, and so cruelly, disappointed; who, having been eye-witnesses of the strange and unexpected degeneracy of Caligula and Nero, concluded that all princes were the same; and that this fair profession of virtue, was no more than a calm portending an earthquake. An early conformity to the practices of an immoral and debauched age, by which he had already much debased his character, gave them but too good reason to conclude, that an increase of power would only facilitate the progress of a distempered habit. Their mind had been so long intent upon this gloomy side of the prospect, that they were blind to all other objects, but those of desolation and despair. But, after all, their suspicions were more awake than their judgments; their fears had overcome their hopes, and left them no leisure to consider, that pleasure and dissipation may sometimes engross the passions, without utterly corrupting the heart. Human nature is not always so depraved, but that the seeds of virtue, when once implanted in a kindly soil, though dormant for a while, will spring up in due time in their full perfection of strength and beauty; and stifle the more luxuriant, though less vigorous, weeds of vice by which their growth was at first retarded. All this was amply verified in Titus; who stands forth as a rare example of the triumph of virtue over the fascinations of power. His accession to the imperial throne wrought an entire change in his manners; inspired him with a just sense of the duties of his eminent station; and taught him to exert all his future endeavours in restoring the tranquillity of a distracted constitution; and in maintaining the liberties of a brave and illustrious people⁸⁹.

εργασθαι.—και αυτος εξισου καλα τουτο τη του
Αυγουστου πολυτιμη αγωσι, λεγοντες οτι ουτ' αν ικανος
εφελθη ποτε, αν ελαττω χρονος εξηκει, ουτ' αν ουλος, αν
πλειονα. ο μιν, οτι τραχυτερος κατ' αρχας δια τε
τους πολεμους και δια τας γασεις γνομενος, ηδυνηθη
μολις ταυτα ενεργησαις αν τη χρονω λαμπρευνοθαι

ο δ', οτι επιταως αρχας, αν ακμη της δοξης απιδαν;
ταχιστα αν ελεγχθεις, ουχι επι μακροισιν εδιδωκεν, οτι
ευτυχια πλειονη η αρετη εχρησατο. Dio Cass. 66. 18.

⁸⁹ "Populum in primis universum—per
"omnes occasiones comitate tractavit."
Suet. in Tit. 8.

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But the envious hand of death suddenly deprived them of this blessing, after a short reign of two years⁹⁰, much more to his country's misfortune than his own⁹¹.—Could such a prince be immortal, despotism itself would lose its terrors.

Domitian,
A. D. 81.

Domitian had exercised various parts of the Imperial office, in his father's life-time; but in so licentious and irregular a manner, as to afford too certain a presage of his future tyranny⁹². On the death of Vespasian he endeavoured to make the world believe, that a share of the empire had been bequeathed to him, but that he had been defeated of his right, by a falsification of the will⁹³. This served as a pretence for him, to engage in open and daily conspiracies against Titus⁹⁴; and, when in possession of the throne himself, to testify his hatred both of his father and brother, by treating their best friends with every species of indignity; and by holding them in the light of his most inveterate enemies⁹⁵.

The administration of this prince was fickle and variable; perpetually fluctuating between the two extremes of gentleness and severity. Among a multitude of blemishes, he had many splendid, and some valuable, qualities: but as the best of them sprang more from caprice and ostentation, than from any real goodness of heart, their operations were uncertain, and their effects imperfect. His virtues, having no solid principle for their support, easily degenerated into vices;

⁹⁰ Δύο τε γὰρ ἐστὶν μῆλα τοῦτο, καὶ μῆνας δύο, ἡμέρας τε ἑκατοσὶν ἕξοντι, ἐπ' ὧν καὶ τριακοδμήσαντες, καὶ μῆνι πέντε καὶ ἡμέραις πέντε καὶ ἑκατοσὶ. Dio Cass. 66. 18.

⁹¹ "Inter hæc morte præventus est, majore hominum damno quam suo." Suet. in Tit. 10. "Hujus sane mors adeo provinciis luctui fuit, uti, generis humani delicias appellantes, orbatum orbem desererent." Aur. Vict. de Cæs. 10.

⁹² "Cæsar consalutatus honorem præturæ urbanæ consulari potestate suscepit titulo tenus, quam jurisdictionem ad collegam proximum transfudit. Cæterum omnem

"vim dominationis tam licenter exercuit, ut: jam tum, qualis futurus esset, ostenderet." Suet. in Dom. 1.

⁹³ "Patre defuncto,—nunquam jactare dubitavit, relictum se participem imperii, sed fraudem testamenti adhibitam." Id. ib. 2.

⁹⁴ "Neque cessavit ex eo insidias frueri fratri clam palamque." Id. ib. 2.

⁹⁵ Τοιοῦτος δὲ διὰ πρὸς πάντας παρ' ἑλπίαν τῆς ἡγεμονίας γινόμενος, πόλιν καὶ ἑαυτὸν διατρέχοντα ἐκ τῆς τοῦ πατρὸς τοῦ τε ἀδελφοῦ φίλων ἀτιμίας καὶ ἀλδριῶν μετασχίσεως. And again, Πάν γὰρ τὸ ὑπερὶ τῶν πολλῶν ἀγαπήθη τε ὑπ' αὐτῶν καὶ ὑποδιδί, ὡς ἐχθροῦ μοίρῃ ἐτάδιστο. Dio Cass. 67. 2.

and this vicious propensity was heightened by peculiar circumstances, which forced him beyond the bounds of his own natural disposition; so that he frequently became rapacious through necessity, and cruel through fear⁹⁶.

With a munificence worthy of Titus, he restored the antient edifices which had been ruined in the late conflagrations; but, envious of every one's honor but his own, made all the repairs in his own name, not preserving the least memorial of the original founders⁹⁷. From the same jealous motive he deprived certain celebrated authors of their lives, and committed their works to the flames, for daring to speak in praise of some eminent personages of late times⁹⁸; conscious, perhaps, that his own character would suffer by the comparison. He likewise punished all scholars and philosophers with death or banishment⁹⁹; while, with an inconsistency peculiar to himself,

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⁹⁶ "Circa administrationem imperii aliquandiu se varium præstitit: mixtura quoque æquabili vitiorum atque virtutum, donec virtutes quoque in vitia deflexit: quantum conjectare licet, super ingenii naturam, inopia rapax, metu sævus." Suet. in Dom. 3.

⁹⁷ "Plurima et amplissima opera incendio absumpta restituit: in quæ et Capitolium, quod rursus arserat: sed omnia sub titulo tantum suo, sine ulla pristini auctoris memoria." Suet. in Dom. 5.

⁹⁸ "Junium Rusticum, quod Pæti Thraseæ et Helvidii Prisci laudes edidisset, appellassetque eos *Sanctissimos Viros*, occidit." Suet. in Dom. 10. "Legimus cum Aruleno Rustico Pætus Thrasea, Herennio Senecioni Priscus Helvidius laudati essent, capitale fuisse: neque in ipsos modo auctores, sed in libros quoque eorum sævitum, legato triumviris ministerio, ut monumenta clarissimorum ingeniorum in comitio ac foro urerentur." Tac. in Agric. 2.

⁹⁹ Ἄλλοι τε αὖτε τῆς αὐτῆς ταύτης τῆς κατὰ τὴν φιλοσοφίαν αἰτίας συγγενὲς διωλοῖτο καὶ οἱ λοιποὶ πάντες ἐπὶ λαοθροῦν αὐδῆς ἐκ τῆς Ρώμης. Dio Cass. 67. 13. "Philosophos omnes urbe Italiaque summovit." Suet. in Dom. 10. "C. Fan- nio Strabone, M. Valerio Messala, Coss. S. C. de philosophis et rhetoribus Latinis factum est; — neque illis solum temporibus nimis rudibus; nec dum Græca doctrina expolitis, philosophi ex urbe Roma pulsi sunt, verum etiam Domitianò imperante sc. ejecti, atque urbe et Italia interdicti sunt. Qua tempestate Epictetus quoque philosophus propter id S. C. Roma decessit." Aul. Gell. 15. 11. Upon all which acts of tyranny Tacitus makes the following pathetic lamentation: "Scilicet in illo igne vocem populi Romani, et libertatem senatus, et conscientiam generis humani aboleri arbitrabantur, expulsi insuper sapientiæ professoribus, atque omni bona arte in exilium acta, ne quid usquam honestum occurreret. Dedimus profectò grande patientiæ documentum,

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"et

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himself, he repaired the decayed libraries, and supplied them with books, collected from all parts of the world, at an immense expence ¹⁰⁰.

He appears to have had a very competent knowledge of those matters which are most necessary to the daily comfort and support of a populous nation ¹⁰¹; and shewed a just sense of it, by many useful regulations for the encouragement of agriculture. Finding that the too universal cultivation of vines was the cause of the scarcity of corn, he prohibited the planting of any new vineyard^s in Italy, and directed that one half of those in the provinces should be destroyed; but soon frustrated the good effects of these institutions, by want of perseverance ¹⁰².

Regardless of every principle of common justice, as far as it affected his own conduct, he was yet very careful that it should be properly administered by others: he, therefore, rescinded many decrees which had been corruptly given; setting a mark of infamy upon such judges as accepted bribes; and keeping so strict an eye over the magistrates, both in the city and the provinces, that more moderate or just ones were no where to be found; though most of them, at his death, relapsed into their former iniquities ¹⁰³.

"et sicut vetus ætas videt, quid ultimum in
"libertate esset, ita nos quid in servitute,
"adempto per inquisitiones et loquendi
"audiendique commercio. Memoriam quo-
"que ipsam cum vita perdidissimus, si tam
"in nostra potestate esset oblivisci quam
"tacere." Tac. in Agric. 2.

¹⁰⁰ "Liberalia studia in initio imperii
"neglexit, quanquam bibliothecas incendio
"absumptas impensissimè reparare curasset,
"exemplaribus undique petitis: missisque
"Alexandriam, qui describerent emenda-
"rentque." Suet. in Dom. 20.

¹⁰¹ "Multa etiam in communi rerum usu
"notavit." Suet. in Dom. 7.

¹⁰² "Ad summam quandam ubertatem
"vini, frumenti vero inopiam, existimans
"nimio vinearum studio negligi arva, edixit,
"ne quis in Italia novellaret, utque in pro-

"vinciis vineta succiderentur, reliqua, uti
"plurimum, dimidia parte: nec exequi rem
"perseveravit." Id. ib.

¹⁰³ "Jus diligenter et industrie dixit.
"Plerumque et in foro pro tribunali extra
"ordinem ambitiosas centumviorum sen-
"tentias rescidit. Recuperatores, ne se
"perforiis assertionibus accommodarent,
"identidem admonuit. Nummarios judices
"cum suo quemque consilio notavit. Auc-
"tor et tribunis plebis fuit, ædilem sordidum
"repetundarum accusandi, judicesque in
"eum a senatu petendi. Magistratibus
"quoque urbicis, provinciarumque præsi-
"dibus coercendis, tantum curæ adhibuit,
"ut neque modestiores unquam, neque jus-
"tiores extiterint: e quibus plerosque post
"illum reos omnium criminum vidimus." Id. ib. 8.

Without

Without the least sense of shame or modesty in his own behaviour, he set up for a general reformer of manners; and punished all offences against common decency with extreme severity¹⁰⁴. From a pretended reverence for religion, he destroyed a monument erected by a father to the memory of his son, out of the stones designed for the temple of Jupiter Capitolinus, causing the bones and remains to be thrown into the sea¹⁰⁵: and yet he made no scruple of aspiring to divine honors; commenced all his decrees and epistles with this impious preface, *Thus commands our Lord and God*; assumed these titles in all future writings and addresses; and would permit no statues to be erected to him in the Capitol, but such as were made of gold or silver, and of a standard weight¹⁰⁶.

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In the earlier part of his life, being entrusted with the administration in the absence of his father, he was going to make a decree to prohibit the killing of oxen for sacrifices, from a motive of compassion excited by the reflexion of a tender-hearted poet. His usual conversation with his friends abounded in high strains of generosity, wherein he exhorted them, in the most earnest terms, to abstain from every appearance of fordidness and parsimony; himself setting the

¹⁰⁴ Of which the following instances are recorded by his biographer: "Suscepta morum correctione, licentiam theatralium promiscue in equite spectandi inhibuit. Scripta famosa, vulgoque edita, quibus primores viri ac foeminae notabantur, abolevit non sine autorum ignominia. Quæstorium virum, quod gesticulandi saltandique studio teneretur, movit senatu. Probrosus foeminis lecticae usum ademit, jusque capiendi legata hæreditatesque. Equitem Romanum, ob reductam in matrimonium uxorem, cui demissa adulterii crimen intenderat, erasit judicium albo. Quosdam ex utroque ordine lege Scatinia condemnavit. Incesta Vestalium virginum, a patre suo quoque et fratre neglecta,

"varie ac severe coercuit: priora capitali supplicio, posteriora, more veteri." Suet. in Dom. 8.

¹⁰⁵ "Ne qua religio Deum impune contaminaretur, monumentum quod libertus ejus e lapidibus templo Capitolini Jovis destinatis filio construxerat, diruit per milites, ossaque et reliquias, quæ inerant, mari misit." Id. ib.

¹⁰⁶ "Pari arrogantia cum procuratorum suorum nomine formalem dictaret epistolam, sic cepit; *Dominus et Deus noster sic fieri jubet*. Unde institutum posthac, ut ne scripto quidem ac sermone cujusquam appellaretur aliter. Statuas sibi in capitolio non nisi aureas et argenteas poni permisit, ac ponderis certi." Id. ib. 13.

BOOK
LII.

example by many signal acts of liberality and self-denial¹⁰⁷. He was particularly severe upon that infamous crew of sycophants, so common in those days of oppression, who made a trade of discovering every offence against the revenue; holding it as a maxim, "that the prince who did not punish informers, encouraged them¹⁰⁸."

But the salutary effects of these seeming virtues were soon defeated by the inconstancy of his temper; though his approaches to covetousness were much slower than those to cruelty¹⁰⁹. His very hours of solitude and retirement were employed in the tortures of harmless insects: a circumstance, which, as an eminent writer observes, is beneath the dignity of history to record, except only as it exhibits a just specimen of his character, and especially, as he pursued the same amusement when he became Emperor¹¹⁰. But from these trifling and ridiculous instances of barbarity, which at first made him only contemptible, the transition was both easy and rapid to those which rendered him the object of terror and detestation. He

¹⁰⁷ "Inter initia usque adeo ab omni cæde abhorrēbat, ut absente adhuc patre, recordatus Virgillii versum,

"Impia quam cæsis gens est epulata juvenis;

"edicere destinaverit, Ne boves impolarentur. Cupiditatis quoque atque avaritiæ vix suspensionem ullam, aut privatus unquam, aut princeps aliquandiu dedit: imo e diverso magnæ sæpe non abstinentiæ modo, sed etiam liberalitatis experimenta. Omnes circa se largissime prosecutus, nihil prius aut acrius monuit, quam ne quid sordide facerent. Relictas sibi hæreditates ab iis quibus liberi erant, non recepit." Suet. in Dom. q.

¹⁰⁸ "Fiscales calumnias, magna calumniantium poena repressit, ferebaturque vox ejus: *Princeps qui non delatores castigat, irascit.*" Id. ib.

¹⁰⁹ "Sed neque in clementiæ, neque in abstinentiæ tenore permansit; et tamen aliquanto celerius ad sævitiam descendit, quam ad cupiditatem." Id. ib. 10.

¹¹⁰ "Inter initia principatus, quotidie secretum sibi horariam sumere solebat: nec quidquam amplius quam muscas capere, et stylo præacuto confingere; ut cuidam interroganti, *Effetus quis intus cum Cæsare?* non absurde responsum sit, a Vibio Crispo, *Ne musca quidem.*" Id. ib. 3.

Εν γούτῃ τῇ Ἀλβανῇ χωρίῳ τὰ πλείστα διαγῶν, ἀλλὰ τι πολλά καὶ γέλοια περὶ αὐτοῦ, καὶ τὰς μὲν γραφίαις καλεῖσθαι. τοῦτο γὰρ καὶ ἀναξίως τοῦ τῆς ἰστορίας οὐκ εἶναι, ἀλλ' ὅτι γὰρ ἰκανῶς τοῦ τρόπου αὐτοῦ οὐδικῶσαι, ἀναγκαιῶς εὐραψαί· καὶ μαλίσθ' ὅτι καὶ μνηστῆρας ὁμοίως αὐτῷ ποιεῖν. Ὅθεν οὐκ ἀχαρτῶς τὸς ἡμεῖς πρὸς τοῦ ἐρωτήσαντος, τι περὶ αὐτοῦ Διομήδεος; ὅτι ἀλάξῃ τι, καὶ οὐδὲ μὴ αὐτῷ παρακαλεῖσθαι. Dio Cass. 66. 9.

reduced

reduced the practice of them to almost a science; and by a singular refinement in the arts of bloodshed, cheered with insidious smiles, and flattered with professions of the warmest esteem, such as he had marked out for the most determined victims of his malice¹¹¹. It was his avowed opinion, that those Emperors, who had been sparing in the infliction of punishments, were more fortunate than virtuous. He despised those who extolled Titus, for having never put a senator to death; and could not be persuaded to yield to the pressing intreaties of the fathers, who solicited his assent to a law, to restrain future princes from the inhuman privilege of murdering their equals at discretion¹¹².

After all his former declamations in praise of generosity, of his own pretended disinterestedness, and severity against extortioners and informers, finding his coffers exhausted by his former extravagances, he first thought of lessening his military expences, by a diminution of the army. But this being warmly opposed by the foreign troops, he plundered without mercy the goods both of the living and dead, upon the slightest accusations; and confiscated the inheritances of the greatest strangers, if any single witness could be found to depose, that the deceased had, when living, declared that *Cæsar was his heir*¹¹³.

Conscious,

¹¹¹ "Erat autem non solum magnæ, sed et callidæ inopinatiæque sævitia. Auctorem summarum pridie quem cruci suffigeret, in cubiculum vocavit. affideret in toro juxta coegit, securum hilaremque dimisit, partibus etiam de cœna dignatus est." Suet. in Dom. 11.

¹¹² Το δ' ἴδιον, εὖτε τοὺς αὐτοκράτορας, τοὺς μὴ ἀλλοτρίους καὶ ἀλλοτρίους, οὐκ ἀγαθούς, ἀλλ' ἐντυχίς ἡμῶν, αὐτὸς δ' οὐκ ἐφροντίζον οὐδὲ τὸν τῶν Τίτου νόμον, ἐν μάλιστα βουλεύοντες ἀποκτείνοντες, οὐδ' ὅτι ἡ γερουσία πάλαι ποτὶ αὐτοὺς παρεστῶτο, μὴ εἶναι τῶν αὐτοκράτορος τῶν ὁμοίων τῶν ἀποκτείναντων. Dio. Cass. 67. 2.

¹¹³ "Exhaustus operum ac munerum-impenfis, stipendioque quod adjecerat, tentavit quidem, ad relevandos castrenses sumptus, militum numerum diminueret. Sed cum obnoxium se barbaris per hoc animadverteret; neque eo secutis in expleandis oneribus omnibus hæteret, nihil penſi habuit quin prædaretur omni modo. Bona vivorum et mortuorum usquequaque, quolibet et accusatore et crimine, corripiebantur: satis erat obiecti qualecunque factum dictumque adveſſum majestatem principis. Confiscabantur illenissimæ hæreditates: vel existente uno qui

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III.

Conscious, at last, that he had lost the confidence, and incurred the general odium of mankind, he felt and lamented the unhappy condition of princes, that no credit was ever given to reports of conspiracies formed against them, till it was too late to guard against the consequences¹¹⁴; of which he soon became a melancholy example. Plots were daily contrived by his most intimate friends, and even by his wife¹¹⁵; and when he complained of them to the senate, little notice was taken, nor any concern shewn to detect or apprehend the conspirators; so that he lived in a perpetual state of suspicion and anxiety¹¹⁶, till he fell by the very death he had so long dreaded.

Profligate and abandoned as he was, he had just religion enough remaining, to fill his mind with credulity and superstition; and to encourage him in a reliance upon dreams and visions. From hence he is said to have foretold, that the Roman state would be much more happy and joyful after his death; an event, that required no great spirit of prophecy to foresee, and which was verified in fact, by the wisdom and humanity of the succeeding princes¹¹⁷.

The tidings of his death were received with great indifference by the populace, and with indignation by the soldiery, who prepared to revenge it, and pronounced him a God. But the senate were so transported with joy, that they instantly treated his character with the bitterest reproaches; erased and annulled his acts;

¹¹⁴ *qui diecret, audisse se ex defuncto cum viveret, heredem sibi Cæsarem esse.* Suet. in Dom. 12.

¹¹⁵ *Conditionem principum miserrimam, aiebat, quibus de conjuratione comperta non crederetur, nisi occisis.* Id. ib. 20.

¹¹⁶ *Per hæc terribilis cunctis et invisus, tandem oppressus est amicorum libertorumque intimorum conspiratione, simul et uxoris.* Id. ib. 14.

¹¹⁶ *Quare pavidus semper atque anxius, minimis etiam suspicionibus præter modum commovebatur.* Id. ib.

¹¹⁷ *Ipsam Domitianum ferunt somniasse, gibbam sibi pone cervicem auream enatam: pro certoque habuisse, beatiorem post se lætioresque portendi statum rei publicæ. Sicut sane brevi evenit, abstinentia et moderatione insequentium principum.* Id. ib. 23.

and

and endeavoured, as far as in them lay, to eradicate his very memory¹¹⁸. C H A P.
V.

The greatest part of the succeeding century may very justly be considered as the golden æra of the Roman constitution; when the minds of the people were relieved from their former terrors; when their lives and properties were secured against the arbitrary invasions of despotism; and the internal tranquillity of the empire restored, under a long succession of wise and virtuous princes, who seemed to aspire to power with no other view, than to exert it in rendering their subjects happy¹¹⁹. This was so pleasing a topic of contemplation, that the great Roman Historian, who had before so boldly and impartially inveighed against the oppressions of former tyrants, had reserved the reigns of Nerva and Trajan for the solace of his old age: an idea, which he dwells upon with satisfaction and rapture¹²⁰.

Though the suspicious temper of Domitian had obliged the conspirators to accelerate his death; yet, before they executed this necessary act of justice, they were very careful to provide a successor. This was Nerva: a person not more distinguished by the nobility of his birth, than by the excellence of his disposition; one, likewise, already devoted to destruction, in consequence of the predictions of

Nerva,
A. D. 96.

¹¹⁸ "Occisum eum, populus indifferenter, miles gravissime, tulit, statimque eum *di-*
" *um* appellare conatus est: paratus et ul-
" cisci, nisi duces defuissent, quod quidem
" paulo post fecit, expostulatis ad poenam
" pertinacissime cædis autoribus. Contra
" senatus adeo lætatus est, ut repleta certatim
" curia non temperaret, quin mortuum con-
" tumeliosissimo atque acerbissimo acclama-
" tionum genere laceraret: scalas etiam in-
" ferri, clypeosque et imagines ejus coram
" detrabi, et ibidem solo affligi juberet:
" novissime eradendos ubique titulos, abo-
" lendamque omnem memoriam decerne-

" ret." Id. ib. Μισοι δὲ τοῦ Δομιτιανοῦ, αἱ
" μικροὶ αὐτοῦ, πολλὰ μὲν ἀργυραὶ, πολλὰ δὲ καὶ
" χρυσαὶ οὖσαι, συγχωποῦντο, καὶ ἐξ αὐτῶν μεγάλα
" χρημᾶτα συνελεγον καὶ αἱ ἀψίδες, πλεῖσαι δὲ ἐν
" ἀσπί τοιοῦμαι, καθρεῖντο. Dio Cass. 68. 1.

¹¹⁹ "Anno octingentesimo et quinquage-
" gesimo ab urbe condita, Vetere et Valente
" consulibus, respublica ad prosperrimum
" statum rediit, bonis principibus ingenti
" felicitate commissa." Eutrop. 8. 1.

¹²⁰ "Quod si vita suppeditet, principatum
" Divi Nervæ, et imperium Trajani, ube-
" riorem securioremque materiam senectuti
" sepofui." Tac. Hist. 1. 1.

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the impostors, who swarmed about the court of that jealous tyrant, whose conscience was ever ready to alarm his fears; and whose superstition induced him to fancy the name of *Emperor* written upon the forehead of every one, who had virtue to deserve it ¹²¹.

The appointment of Nerva was confirmed by the unanimous approbation of every order of men in the Roman state ¹²²; and his future conduct amply justified their choice. Though his age and infirmities promised him but little hopes of any long enjoyment of his honors ¹²³, he every day gave some new instances of the real benevolence of his heart; and convinced them, by the mildness of his government, that the liberty of the people is not irreconcilable with the authority of the prince ¹²⁴. From a just contempt of the extravagant vanity of his predecessor, he forbade the erection of any statues of gold or silver to himself. Whatever he found in the treasury, which had been illegally extorted by Domitian, he restored to the original owners. He took the poorer citizens under his immediate protection; distributed lands among them; and sold his plate, furniture, and even his own family estates, to relieve their ne-

¹²¹ Ηκουσα γυναι και εκεινο, says the historian, ότι πάλιν αίμα αύλου δ' Δομνιανος υποπτευσας, αποκλινει ηδηλας, και σφαι τα νομαλα ις σαιδιον φιλυμνοι διδυροι ισγραψας, υπο το προσκεφαλαιον η τη κλιτη η η απικαυει, υπηθηκε.—και τουτου, και αλλας διανοουμνοι, συνεταχυνται την επιβουλην. ου μίθοι προτεροι επιχειρησαν εργη, πριν τον διαδεξομενοι την αρχην αύλου βιβαιωσασθαι. διελξαίλο μιν δη και αλλοις τισι μηδεις δε κεινον δεξωμενοι, (παλις γαρ αύλους εις διαπειρωμενους σφαι ηφουδησας), επι τον Νερωνα ηλθοι, επιδη και ευγενεας και επιμικτας ην, και προστι και εκινδυνησαι διαβληδεις υπ' ασεολογων, ότι μεταρχησιν φρασθην' εις ουπιε εφαι επισαν αύλοι ακαδιξασθαι την ηγεμονιαν. Dio Cass. 67. 15.

¹²² Μετα δε Δομνιανου, Νερωνος Κοκκηϊον ει 'Ρω-

μαιοι αποδυξαν αυλικρατορα. Dio Cass. 68. 1. "A senatu gratanter exceptus est." Sex. Aur. Vict. epit. 12.

¹²³ Ηι δε δ' Νερωνος υπο τι του γηρας και υπ' ασε-ρωτιας—ασεβοτιας. Dio Cass. 68. 1.

¹²⁴ "Nunc demum redit animus, et quamquam primo statim beatissimi sæculi ortu Nerva Cæsar res olim diffociabiles miscuerit, principatum ac libertatem, augeatque quotidie felicitatem imperii Nerva Trajanus; nec spem modo ac votum securitas publica, sed ipsius voti fiduciam, ac robur assumpserit; natura tamen infirmitatis humanæ, tardiora sunt remedia quam mala." Tac. in Vit. Agric. 3.

necessities.

cessities¹²⁵. He bound himself by a solemn oath never to put a senator to death, and persevered in that resolution, notwithstanding the many conspiracies that were formed against him: always directing himself by the advice of the leaders of that body, and enacting many laws under the sanction of their authority; one, in particular, to prohibit an unnatural practice, at this day too common in the same country, to the great detriment of the human race¹²⁶. Conscious of his own integrity, he had the courage to declare, "that he had done nothing to prevent him from laying down the load of government, and retiring in safety¹²⁷:" but finding, after all, that his own personal virtues were no protection against the machinations of traitors, and that his years exposed him to contempt, he boldly ascended the Capitol, where he publicly adopted Trajan as his son, partner, and successor; pronounced him Cæsar in presence of the senate, and intrusted with the power of avenging his wrongs¹²⁸.

¹²⁵ Απικτι δι και ανδραίας αυτη χρυσους γινωσθαι. τοις δι των ουσων επι του Δομιλιαου μαλιν εισηγηταις παντα αποδωκειν, οσα επι βασιλευσιν οια ευρηθη. τοις τι πανι πικησιν τω Ρωμαϊωι εκ χιλιαδα και πεντακοσιας μαριαδας γης ελθονι εχαρισσωντο, βουλευταις τισι των τι αγορασιν αυτων και την διατομην προσταξας. χρηματων δι απορην, πολλα μιν ιματια, και οικια και αργυρα και χρυσα, αλλα τι σπιπλα, και εκ των οδων και των βασιλικων, πολλα δι και χωρια και οικιας, μαλλον δι παϊα, πλη των αναγκαιων, αποδοτο. ου μισοι και περι τας τιμας αυτων μικρολογησατο, αλλα και η αυτη τουτη πολλους ευηργετησε. Dio Cass. 68. 2. "Iste quicquid antea poenæ nomine tributis accesserat, indulgit: afflictae civitates relevavit: puellas, puerosque natos parentibus egestosis sumptu publico per Italix oppida ali jussit." Sex. Aur. Vict. epit. 12.

¹²⁶ Ωμοσι δι και επι τη συνδριω, μηδεν των βουλευτων φονισιν* εβιβαιωσι τι τον ορκον, και επι επιβουλευδης. επρατις δι ουδεν ο, τι μη μετα των πρωτων ανδρων. νομοθετησι δι αλλα τι και περι του μη υποχριζεσθαι τινα. Dio Cass. 68. 2.

¹²⁷ Νερουας δι ουτως ηρχη καλως, ωτι ποτε απικτι, "Ουδεν τοιουτον πεποιηκα, ωτι μη δυνασθαι την αρχην τι καταδωσθαι, και ασφαλως ιδιαιτυσται." Dio Cass. 68. 3.

¹²⁸ Κρασσου τι Καλπουρπιου—επιβουλευκοτος μετα και αλλων αυτων—ιδεν ο Νερουας, δια το γηρας βαθυ καταφρονουμενος, ανεβη τι εις το Καπιτωλιον, και εφη γενηθησας, "Αγαθη τυχη της τι βουλης και του δημου των Ρωμαϊων, και μου αυτου, "Μαρκον Ουλπιον Νερωνα Τραιανον ποιουμαι." και μιλα επι τη συνδριω Καισαρα ει αυτου επιδιξι, και απιτιλιν αυτη αυτοχειρια (ηρχη δι της Γερμανιας εκεινος).

Τισιναι Δαναοι ιμα δακρυα σοισι βελισσι.

Dio Cass. 68. 3. "Simul filius, simul Cæsar, mox Imperator et confors tribunitix potestatis, et omnia pariter et statim factus es." Plin. Pan. 8. "Hic Trajanum in liberi locum, inque partem imperii adoptavit: cum quo tribus vixit mensibus." Sex. Aur. Vict. epit. 12.

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Having, by this prudent provision, guarded against the mischiefs of a disputed succession, he peaceably discharged the last debt to nature; and, as the highest token of the esteem and reverence of his subjects, was interred in the same sepulchre with the remains of Augustus ¹²⁹.

Trajan,
A. D. 98.

The adoption of an entire stranger both in family and nation, from a pure conviction of his being the fittest person in the whole empire, to discharge the duties of that important station to which he was exalted, cannot fail to set the character of Nerva in the most favorable point of view in the eyes of posterity; as it amounts to an irrefragable proof both of the goodness of his heart, and the solidity of his judgment; and that he sincerely preferred the honor and interest of his country, to every private and personal consideration of blood or friendship ¹³⁰.

The impression, which so substantial a mark of distinction made upon the mind of Trajan, appears from the specimen he gave of the mild and equitable principles by which he intended to regulate his political conduct. Immediately on receiving the notice of his nomination to the imperial throne, he paid his profound respects to the senate, in a letter written with his own hand; in which he expressed the warmest esteem for the worthy and virtuous, with an equal abhorrence and contempt of the vicious and profligate; assuring them that both their lives and reputations should be ever safe under his protection. The natural bent of his disposition, which was equally free from dissimulation and asperity, easily inclined him to adhere to this engage-

¹²⁹ "Nec multo post vitam finivit, anno ætatis sexagesimo tertio. Cujus corpus, a senatu quondam Augusto honore delatum, in sepulchro Augusti sepultum est." Sex. Aur. Vict. epit. 12.

¹³⁰ 'Οὐτω μὲν ὁ Τραϊανὸς Καίσαρ, καὶ μίαν τοῦτο ἀνελκείων ἐγγυῖον, καίτοι συγγενὴν τοῦ Νέρουα

οἶται τινος. ἀλλ' οὐ γὰρ τῆς τῶν κοινῆς σωτηρίας ὁ αὐτοῦ τῆς συγγενίας προτιμήσει. οὐδ' αὖ, ὅτι Ἰβηρ ὁ Τραϊανός, ἀλλ' οὐκ Ἰταλός, οὐδ' Ἰταλιώτης ἦν, ὥστε τί παρα τοῦτο αὐτὸς ἐποίησατο, ἐπειδὴ μηδὲς προσ-
θεν ἀλλοιότης τοῦ τῶν Ῥωμαίων κράτος ἐσχυρεῖ. τὴν γὰρ ἀρετὴν, ἀλλ' οὐ τὴν πατρίδα τινος, ἐξιστάει δὴν αὐτοῦ. Dio Cass. 68. 4.

ment with the most religious punctuality¹³¹; so that no more than one senator suffered death during the whole of his reign; and even that one, by the judgment of the senate alone, without the knowledge or privity of the Emperor¹³². The favorite object of his ambition seems to have been, to make his subjects feel all the benefits of his power, without its inconveniences; to conceal the austere character of the monarch, under the endearing one of the parent¹³³; and to convince them that he was not less either a man or a citizen, because he was their governor¹³⁴.

By a judicious cultivation of the social virtues, too much neglected by the worthiest of former princes, he eclipsed even his own military glory, and at once commanded both the respect and love of his people¹³⁵. When blamed by some of his friends for so much condescension, he replied in these memorable words; "An Emperor ought so to behave himself to private persons, as he would

¹³¹ 'Ὡς δὲ αὐτακράτωρ ἔγεντο, ἐπετείλει τῇ βουλῇ αὐτοχειρίᾳ ἄλλα τι, καὶ ὡς οὐδὲν ἄνδρα ἀγαθοῦ ἀποσφάζει ἢ ἀτιμάσκει. καὶ ταῦτα καὶ ὁρκοῖς οὐ τότε μόνον, ἀλλὰ καὶ ὕστερον ἐπιγινώσκοντο, καὶ ἔργῳ ἐπιτιμῶσι, καὶ πάλιν ἐπιβουλεύουσιν. τῇ τε γὰρ φύσει οὐδὲν οὐτε διπλοῦν οὐτε δολίον, οὐτε τραχύ τι, ἀλλὰ τοὺς μὲν ἀγαθοὺς ἐφίλει καὶ ἐδίδουτο καὶ ἐτίμα, τῶν δὲ ἄλλων ἡμίλει. Dio Cass. 68. 5. Οὐτ' ἐφθονοῖ, οὐτε παύει τινα, ἀλλὰ καὶ παντα παύει τοὺς ἀγαθοὺς ἐτίμα καὶ ἐμεγαλύνει· καὶ διὰ τοῦτο οὐτε ἐφθονοῖ τινα αὐτῶν, οὐτε ἡμίσει. διαβολαῖς τε ἡμίσει ἐτίθει, καὶ οργῇ ἡμίσει ἐδούλουτο· τῶν τε χρημάτων τῶν ἀλλοτρίων ἰσά καὶ φονοῖ τῶν ἀδικῶν ἀπιχέτο. Id. 68. 6.

¹³² "Nihil non tranquillum et placidum agens, adeo, ut omni ejus ætate unus tantum senator damnatus sit; atque is tamen per senatum, ignorante Trajano." Eutrop. 8. 2.

¹³³ "Unde merito *Pater Patriæ* dictus est." Sex. Aur. Vict. epit. 13.

¹³⁴ "Non de tyranno, sed de cive, non de domino, sed de parente loquimur.

¹³⁵ "Unum ille se ex nobis, et hoc magis ex-

"cellit atque eminet, quod unum ex nobis putat: nec minus hominem se, quam hominibus præesse meminit." Plin. Pan. 2. Φιλοῦμαινος τε οὐκ ἐπ' αὐτοῖς μάλλον, ἢ τιμῶμαινος ἔχεται, καὶ τῷ τε δήμῳ μετ' ἐπισημίας συγγενέας, καὶ τῇ γένουσιν σιμωσπρεπῶς ἡμίλει· ἀγαπῆτος μὲν πᾶσι, φοβίρος δὲ μηδενὶ. πλὴν πολέμιος, οὐ. Dio Cass. 68. 7.

¹³⁵ "Romæ et per provincias æqualem se omnibus exhibens; amicos salutandi causa frequentans, vel ægrotantes vel cum festis dies habuissent, convivia cum iisdem indifcreta vicissim habens: sæpe in vehiculis eorum sedens: nullum senatorum lædens: nihil injustum ad augendum fiscum agens: liberalis in cunctos, publice privatimque ditans omnes et honoribus augens, quos vel mediocri familiaritate cognovisse—Ob hoc per orbem terrarum Deo proximus, nihil non venerationis meruit, et vivus et mortuus." Eutrop. 8. 2. "Liberalis in amicos: et tanquam vitæ conditione par, societatibus perfrui." Sex. Aur. Vict. epit. 13.

"with

"with Emperors to behave to him, were he in a private station"¹¹⁶."

"Two grand qualities," says an historian, "are expected in all great princes, integrity in domestic life, fortitude in war, and prudence every where." This he applies to Trajan, by observing that "he had so perfect a command over himself, in matters of the highest moment, that he could easily temper one virtue with another," so as to set off every one to the best advantage"¹¹⁷.

On his arrival in Rome Trajan instantly applied himself to a reformation of the abuses which had crept into the government, by shewing favor to persons of virtue and merit; by granting various immunities to the cities of Italy; and by contributing liberally to the education of their youth"¹¹⁸. Immediately upon his inauguration, he took a most solemn oath in presence of the senate, that he would make the laws the rule of his government; and publicly declared, that the prince was not above the law, but the law above the prince"¹¹⁹. All these professions he amply fulfilled, by a strict and personal attention to the distribution of justice"¹²⁰; by

¹¹⁶ "Inter alia dicta hoc illius fertur egregium: amicis enim culpantibus, quod nimis circa omnes comis esset, respondit: *Talem se Imperatorem esse privatis, quales esse sibi Imperatores privatus optasset.*" Eutrop. 8. 2.

¹¹⁷ "Cum duo sint, quæ ab egregiis principibus expectentur, *Sanctitas domi, in armis fortitudo, utrobique prudentia*; tantus erat in eo maximarum rerum modus, ut quasi temperamento quodam virtutes miscuisse videretur." Sex. Aur. Vict. epit. 13. "Inusitata civilitatis et fortitudinis fuit." Eutrop. 8. 2.

¹¹⁸ Εἰς τὴν Ῥώμην μειδῶν, πολλὰ ἔποιε πρὸς τὴν διορθωσιν τῶν κοινῶν, καὶ πρὸς χάριν τῶν ἀγαθῶν· ἐκίμων τε διαφορῶτως ἐπιμελουμένος, ὥς καὶ ταῖς πόλεσι ταῖς ἐν Ἰταλίᾳ πρὸς τὴν τῶν παιδῶν τροφὴν πολλὰ χάρισσάσαι, καὶ τοιοῦτους εὐεργετῶν. Dio Cass. 68. 5. "Multas immunitates civitati-

bus tribuens." Eutrop. 8. 2.

¹¹⁹ "Sedens præbuit jusjurandum, et ille juravit, expressit, explanavitque verba, quibus caput suum, domum suam, si scilicet enter sefellisset, deorum iræ consecraret." Plin. Pan. 64. And again, "In rostris quoque simili religione ipse te legibus subjecisti: legibus, Cæsar, quas nemo principi scripsit. Sed tu nihil amplius vis tibi licere, quam nobis: sic sit, ut nos tibi plus velimus. Quod ego nunc primum audio, nunc primum discō; non est princeps supra leges, sed leges supra principem." Ib. 65.

¹²⁰ Οὐ μόνον διὰ πολέμους ἀνῆλθε, τ' ἄλλα ἔτι καὶ διὰ τὴν καὶ ἔτιον εὐκρίαν, ἀλλὰ τότε μὲν ἐν τῇ ἀγορᾷ τοῦ Αυγούστου, τότε δ' ἐν τῇ γαλ τῇ Διοῦσας ἀνιμασμένη, πολλὰκις δι' αὐτὴν ἀλλοθὶ ἀνῆλθε ἐν βήματι. Dio Cass. 68. 10.

a scrupulous observance of the laws already in being; and by improving them, where defective, by the addition of others, in matters both of policy and religion¹⁴¹: and so conscious did he appear of the purity of his own intention, that on the delivery of the sword to his greatest officer of state, as the usual token of power, he added the following admonition; "This I deliver you to use in my defence, " if I act uprightly; if otherwise, against me: for the errors of a " sovereign are of all others the least excusable¹⁴²."

Virtues of this active and popular kind easily communicated themselves to his royal consort; who, on her approach to the palace, made this concise, but cordial, address to the admiring multitude; "Thus do I enter, as I would wish to retire:" and she, in fact, conducted herself throughout with such exemplary prudence, modesty, and affability, as to put the tongue of calumny to utter silence¹⁴³. Where is the Briton, who can contemplate so uncommon a pattern of female excellence, and be at a loss for a parallel?

¹⁴¹ "Justitiae vero, ac juris humani divinique, tam repertor novi, quam inventati custos." Sex. Aur. Vict. epit. 13.

¹⁴² "Usque eo innocentiae fidens, ut praefectum Praetorio Saburanum nomine, cum infigne potestatis, uti mos erat, pugionem daret, crebro monuerit: *Tibi ipsum ad munimentum mei committo, si recte agam: sin aliter, in me magis: quod moderatorem omnium vel errare minus fas sit.*" Sex. Aur. Vict. de Cæs. 13.

Δαδὲ τὸ τοῦ ξίφους, ἵνα, ἂν μὴ καλῶς ἀρχῶ, ὑπὲρ μου, ἀνδὲ κακῶς, κατ' ἐμὸν αὐτῆς χρῆσθῃ. Dio Cass. 68. 16.

¹⁴³ Πλωτῖνα δὲ γυνὴ αὐτοῦ, ὅτι πρῶτον ἐς τὸ παλαιότερον ἴσθαι, ἐπὶ τοὺς ἀναβαδμούς καὶ πρὸς τὸ πλῆθος μεταγραφισα ἵπτι, "Τοιαυτὴ μὲντοι ἠγανδα εἰσερχομαι, οἷα καὶ ἐξελθὼν βουλομαι." καὶ οὕτω γὰρ ἐκὺντῃ διὰ πάσης τῆς ἀρχῆς διηγάγει, ὥστε μηδεμίαν ἐπιγορίαν σχίσιν. Dio Cass. 68. 5. To this may be properly added the following compliments: "Tibi uxor in decus et glo-

riam cedit. Quid enim illa sanctius? "quid antiquius?—Quam illa nihil sibi ex fortuna tua, nisi gaudium vindicat? "Quam constanter non potentiam tuam, sed ipsum te reveretur? Idem estis invicem quod fuistis, probatis ex æquo: nihilque vobis felicitas addidit, nisi quod scire cepistis, quam bene uterque vestrum felicitatem ferat. Eadem quam modica cultu? Quam parca comitatu? Quam civilis incesu? *Mariti* hoc opus, qui ita imbuat, ita instituit. Nam uxori sufficit obsequii gloria. An cum videat quam te nullus terror, nulla comitatur ambitio; non et ipsa cum silentio incedat, ingreditentemque pedibus maritum, in quantum patitur sexus, imitetur? Decuerit hoc illam, etiam si diversa tu facias. Sub hac vero modestia viri, quantam debet verecundiam uxor marito? *foemina sibi?*" Plin. Pan. 83.

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It should seem likewise, that some part of the antient rights of the "comitia" were now restored; because we find Trajan appearing in the Forum, as a candidate for his third consulship, and conforming to several of the ceremonies usually observed in the days of the republic¹⁴⁴. What particular share of constitutional liberty the people recovered does not appear; but nothing can be a more certain criterion of the general mildness of this reign, than that every person was permitted to think for himself, and to publish his sentiments to the world¹⁴⁵.

His elegant panegyrist lays a particular stress upon the importance of the privilege which the age then enjoyed, of passing free censures upon the conduct of tyrants, which can only be done under a good prince, and which, indeed, is the surest test of his goodness: for when succeeding times are silent concerning a bad prince, it is a manifest sign that the reigning one is no better¹⁴⁶. How happy would it be, if we of this free country, who are, perhaps, the only people upon earth capable of feeling the real benefit of such a privilege, were as temperate in the use, as we are secure in the possession,

¹⁴⁴ "Comitiis tuis interfuisti, candidatus non consulatus tantum, sed immortalitatis, et gloriæ, et exempli, quod sequerentur boni principes, mali minarentur. Vidit te populus Romanus in illa vetere potestatis suæ sede: perpeffus es longum illud carmen comitiorum, nec jam irrendam moram: consulque sic factus es, ut unus ex nobis, quos facis consules." Plin. Pan. 63.

¹⁴⁵ "Rara temporum felicitate, ubi sentire quæ velis, et quæ sentias dicere licet." Tac. Hist. 1. 1.

¹⁴⁶ This passage therefore ought always to be remembered by every true friend of political liberty; "Quare ego te, Cæsar, muneribus omnibus tuis, omnibus comparo; multis antepono: quod licet nobis et in præ-

teritum de malis imperatoribus quotidie vindicari, et futuros sub exemplo præmonere, nullum locum, nullum esse tempus, quo funestorum principum manes, a posteriorum execrationibus conquiescant. Quo constantius, P. C. et dolores nostros et gaudia proferamus; lætemur his quibus fruimur; ingemiscamus illis quæ patiamur. Simul utrumque faciendum est sub bono principe. Hoc secreta nostra, hoc sermones, hoc ipsæ gratiarum actiones agant; meminerintque sic maxime laudari incolumem imperatorem, si priores secus meriti reprehendantur. Nam cum de malo principe posteri tacent, manifestum est eadem facere præsentem." Plin. Pan. 53.

of it; and that, while we indulge ourselves, at pleasure, in exposing the vices of deceased monarchs, we did equal justice to the virtues of a living one; who has adorned the morality of the best of pagans, with the piety of the best of christians.

Trajan, though deficient in the more elegant and ornamental parts of a liberal education, such especially as were necessary to form the complete orator, a character always held in the highest degree of reverence among the Romans, was a competent master of the general topics of solid and useful learning, and was highly sensible of its importance to a great and mighty people¹⁴⁷; he therefore cherished and rewarded the professors, and established public libraries for its promotion and encouragement¹⁴⁸. In the true spirit of princely generosity he, likewise, improved and decorated fundry provinces of the empire with high-roads, ports, and other public works and edifices, equally conducive both to beauty and convenience; and all this without any wanton waste of the blood of his subjects¹⁴⁹. Many of these remain even at this day, and will be lasting monuments of his taste and magnificence¹⁵⁰.

Though inspired with an ardent passion for war, he contented himself with the glory of the day, and carefully prevented those

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¹⁴⁷ "Magis simpliciora ingenia aut eruditissimos, quamvis ipse parca esset scientiz, moderateque eloquens, diligebat." *Sax. Aur. Vict. epit.* 13. Παιδίας μὲν ἀκριβοῦς, ἴση ἐν λόγοις, οὐ μετρίχη· τὸ γὰρ μὴν ἔργον αὐτῆς καὶ πρῶτον καὶ ποιεῖ. *Dio Cass.* 68. 7.

¹⁴⁸ Κατισκυῖασι δὲ καὶ βιβλίων ἀποθήκας. *Id.* 68. 16.

¹⁴⁹ "Orbem terrarum ædificans." *Entrop.* 8. 2. Καὶ ἰθαυτὰ παμπόλλα μὲν ἐς τοὺς πολέμους, παμπόλλα δὲ ἐς τὰ τῆς εἰρήνης ἔργα· καὶ πλεῖστα, καὶ ἀναγκαιοτάτα καὶ ἐν ὁδοῖς καὶ ἐν λιμένεσσι καὶ ἐν οἰκοδομημασὶ δημοσίοις καθάσκειν αὐτὰς, οὐδὲν τοῦ αἵματος οὐδὲν αὐτῶν ἀναδωσέν. ὅτι γὰρ ποὺ καὶ μεγαλοφρον καὶ μεγαλογνώμων ὦν, ὥς καὶ τῇ ἱστορίᾳ ἐπιγράφεται, ὅτι ἐξαρκοῦντα αὐτῶν τῶν

Ῥωμαίων δὴμῶν ἐποίησεν, ἐπειδὴ διαφθάρσει πρὸς καὶ μίσην καὶ πικραλλοτέρην ἐξηγασαίτο. *Dio Cass.* 68. 7. "Datur intueri pulcherrimas ædes, deterio situ, auctas ac vigentes. Magnum hoc tuum non erga homines modo, sed erga tecla ipsa meritum, sistere ruinas, solitudinem pellere, ingentia opera eodem quo exstructa sunt animo, ab-interitu vindicare." *Plin. Pan.* 50.

¹⁵⁰ Ἐστῶσι ἐν τῇ ἀγορᾷ καὶ κίονα μέγιστοι, αἵ μὲν ἐς ταφὴν ἰαυλῶν, αἵ μὲν δὲ ἐς ἐπιθῆξιν τοῦ καλῆς τῆς ἀγορᾶς ἔργου. πάντες γὰρ τοῦ χορίου κίονες οὗτοι, κατισκυῖασι τοσούτοι ὅσοι ὁ κίων ἀνίσχη, καὶ τῇ ἀγορᾷ ἐκ τοῦτου πλεονη καθίσκειν αὐτή. *Dio Cass.* 68. 16.

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fatal and bloody consequences, into which a fierce and impetuous soldiery are too often precipitated by the insolence of victory. This procured him the esteem of his very enemies¹⁵¹; infomuch that his illustrious adversary, Decebalus, began now to tremble for his liberty, conscious that, though he had once conquered Domitian, the Roman people were yet invincible: a people, whom he had now to encounter, with Trajan at their head, who was more irresistible for his justice, fortitude, and integrity of manners¹⁵², than even for his knowledge in the arts of war.

The empire, which Augustus¹⁵³ and his successors were contented to secure, rather than to enlarge, was extended by Trajan to the utmost limits it ever reached¹⁵⁴. But this circumstance, when weighed in the balance of sound and rational policy, will, perhaps, appear more honorable to the prince, than beneficial to the state. It is no wonder, indeed, that the lustre of conquest should impose upon the imaginations of a vain and high-spirited people, who thought the world was made for no other purpose, than to crouch under the wings of the Roman eagle: but it is equally true, that a sovereign, who is daily striving to acquire more than he can defend, is only treasuring up future losses, and multiplying the causes of disappointment and humiliation. These consequences are too obvious to require any particular illustration; and were fully verified by the subsequent history of this mighty empire, which

¹⁵¹ Εἰ δὲ καὶ φιλοπολεμὸς ἦν, ἀλλὰ τῇ τε καλοῦ-
θῶσι, καὶ τοῦ ἐχθροῦ μὴ καθαιρῆσι, τοῦ οἰκίου
δὲ αὐξήσει ἠκμῖτο. οὐδὲ γὰρ οὐδ' ἑπὶ μᾶλλον ἐν τοῖς
τοιούτοις γιγνέσθαι, τοῦ τοῦ στρατιώτου ἐξοικουομένου
τε καὶ ὑπερφρονῆναι, συνέβη πόλιν ἐκ' αὐτοῦ δύλως ἐγ-
κράτως αὐτὸν ἡγεῖν. διὰ ταῦτα μὴ οὐκ ἀπιστοῦν ὁ
Διοκῆταλος αὐτὸν ἰδίδει. Dio Cass. 68. 7.

¹⁵² Περὶ δὲ τοῦ Διοκῆταλου τὴν ὁρμήν αὐτοῦ,
ἐφ' ᾧ οὕτως αἶτι καὶ ἐν μὲν, ὅτι πρότερον μὴ οὐ Ῥω-
μαῖοι, ἀλλὰ Δομιτιανὸς ἐνίκηται, τότε δὲ ὡς πρὸς
τοὺς Ῥωμαίους καὶ πρὸς Τραϊανὸν αὐτοκράτορα πο-

λεμήσοι. πλείονος γὰρ ἐπὶ τῇ δικαιοσύνῃ, καὶ ἐκ' αἰ-
δῆς, τῇ τε ἀπλοσύνῃ τῶν ἡθῶν διαφέρει. Dio
Cass. 68. 6. "Gloriam militarem civilitate
"et moderatione superavit." Eutrop. 8. 2.

¹⁵³ P. 229.

¹⁵⁴ "Romani imperii, quod post Augustum
"defensum magis fuerat, quam nobiliter
"ampliatum, fines longe lateque diffudit."
Eutrop. 8. 2. "Primus aut solus etiam
"vires Romanas trans Istrum propagavit."
Sext. Aur. Vict. de Cæs. 13.

from

from henceforward began gradually to consume in its own strength, till it expired in a dream; leaving no other traces behind, than the bare memory of its former existence; to operate as an instructive lesson to future ages; and to shew of what little estimation the highest point of human grandeur appears in the sight of God; who "casteth out the counsels of princes" at his pleasure; and blasts the ambitious designs of the haughty conquerors and tyrants of the universe, with the breath of his mouth.

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But such reflexions did not strike the minds of the writers of that age, who did not look into futurity; and who being equally affected by the brilliant fallies of martial heroism, and the patriotic, though less splendid, efforts of political prudence, have spoken of this prince in such exalted strains, as if his virtues excelled the ordinary powers of description¹⁵⁵. Such eulogies are certainly too highly touched by the interested flatterers of his own times; though they may likewise be ascribed, in part, to the quick feelings of the people in general, now happily restored to a state of liberty and tranquillity; which induced them to look up to the reigning prince, as a divinity sent from heaven to redeem them from their oppressions¹⁵⁶. However, if the testimony of less partial posterity be of any weight, they were not void of good foundation.

It is a natural and becoming wish, that the examples of worthy princes should produce a just effect upon the minds of their successors.

¹⁵⁵ See that highly finished piece of adulation, so well known under the title of "*C. Plinii panegyricus Trajano dictus*," from which all subsequent writers have chiefly borrowed their ideas of this celebrated Emperor. "Iste talem se reipublicæ præbuit, qualem vix ægreque exprimere valuerunt summorum scriptorum miranda ingenia." Sex. Aur. Vict. epit. 13. "Rempublicam ita administravit, ut omnibus principibus merito præferatur." Eutrop. 8. 2. Τα

τι ἀλλὰ δὲ ἐλπίζετο τῷ Τραϊανῷ πολλὰ ἢ βούλη, καὶ Οὐσίμων, εἰς οὐκ ἀριστὸν ἐπανομασσεύ. Dio Cass. 68. 23.

¹⁵⁶ "Quæ omnia eo majora visabantur, quo per multos atque atroces tyrannos perditio atque prostrato statu Romano, in remedium tantorum malorum divinitus credebatur opportune datus: usque eo, ut adveniens imperium ejus pleraque miseria denuntiaverint." Sex. Aur. Vict. epit. 13.

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When, therefore, any future generations, who cannot be suspected of flattery, voluntarily hold up such illustrious characters as patterns of imitation, they bear the most unequivocal testimony possible to their real merit. Thus it happened with regard to the subject of our present contemplation; whose virtues had made such a deep impression upon the minds of the Romans for several succeeding centuries, that, upon the accession of every new Emperor, it was made a necessary part in the congratulatory address of the senate, that he might be *happier than Augustus, and better than Trajan*¹⁵⁷.

It must still, however, be confessed, that this paragon of princely excellence has been charged with several gross and sensual vices, which even the loose and dissolute morals of paganism dare not justify; though the too great frequency of such infamous practices, and the pretence of their not affecting his political conduct, have been urged in their mitigation¹⁵⁸. It is true likewise, that, notwithstanding the fatherly tenderness which he professed for *all* his subjects, he sometimes withdrew it from the most virtuous and deserving part of them; suffering them to be exposed to the most unjust and inhuman persecutions, for no other crime, than a courageous adherence in their duty to their divine master.

The same barbarities, when exercised by Nero and Domitian, did but aggravate their general guilt, and increase the catalogue of those indiscriminate acts of tyranny, with which those scourges

¹⁵⁷ "Hujus tantum memoria delatum est, ut usque ad nostram ætatem non aliter in senatu principibus acclametur, nisi *felicior Augusto, melior Trajano*. Adeo in eo gloria bonitatis obtinuit, ut vel assentantibus, vel vere laudantibus, occasione magnificentissimi præstet exempli." Eutrop. 8. 2. This author finished his history with the reign of Jovian, A. D. 364, at the distance of two centuries and a half from the age of Trajan.

¹⁵⁸ "Quin etiam vinolentiam, quo vitio, uti Nerva, angebatur, prudentia molliverat; curari vetans jussa post longiores epulas." Sex. Aur. Viêt. de Cæs. 13. "Cibo vino-que paululum deditus erat." Id. epit. 13. Οἶδα μὲν ὅτι καὶ περὶ μαρτυρία καὶ περὶ οἶνον ἰσχυροῦ δακνὺν ἀλλ', οἱ μὲν τι ἐκ τούτων ἢ αἰσχροῦ ἢ κακοῦ ἢ ἐδιδρακτοῦ ἢ ἐπεποδοῦ, κατηγοροῦντες αὐτὸν ἔχουσιν διὰ τοῦτο οἶνον διακροῦντες ἔπαινον, καὶ ὑψηλὸν ἢ, ὡς τοῖς πάλαι δικαίως εὐδοκίαν ἐλπίσθησαν. Dio Cass. 68. 7.

of mankind infested all such as had the misfortune to come within the reach of their power. But, when capriciously inflicted by the arm of a prince, who affected to conduct himself by the rules of universal clemency, and to extend an equal protection to his subjects of every sect and denomination, they fell with redoubled weight upon the heads of the innocent victims; and appeared, in the eyes of all true friends of humanity, with tenfold horror and injustice. The undistinguished severities of a bloody task-master, though sensibly felt, and bitterly lamented, by those who bear them, are somewhat alleviated, by the number of fellow-sufferers: but the harsh and unprovoked correction of a once-affectionate parent cuts with a much keener edge, and imprints a wound more piercing and afflictive, as coming from a hand by which they had before been nurtured and cherished.

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From these unnatural acts of barbarity, committed by a prince, who was, otherwise, one of the best that ever graced the throne of Rome, may be deduced this important truth, that unlimited toleration is not easily reconcilable with the contracted and groveling spirit of polytheism.

Of the myriads of deities with which superstition and idolatry had peopled the pagan heavens, none were supposed infinitely omnipotent; each had his particular rank assigned in the celestial senate; each was confined to his particular province and function; each, in his turn, was intitled to his share of adoration; consequently, there was little room for jealousy and emulation among those, who were alike worshippers of all. These fictitious gods being, likewise, confessedly defiled with the worst of vices, it was not the interest of a people, then led astray by the delusions of the prince of darkness, to dispute that authority, under which they enjoyed an unbounded liberty of revelling in the grossest sensualities. But this mutuality of toleration, which the polytheists had abundant inducements to allow to

each other, could not, by any parity of reason, be applied to the *One God* of the Christians, who would bear no equal, and who was "of purer eyes than to behold iniquity." An additional impediment to this indulgence arose from the fashion, adopted by several of the princes, even while on earth, of becoming themselves candidates for the godhead; and therefore not likely to relish the idea of an all-perfect, spiritual, and almighty Being; who, if they had admitted him to exist at all, they were bound to acknowledge, would have instantly superseded and annihilated their own visionary and usurped divinity.

History, indeed, has preserved the memory of some immunities, occasionally extended to the Christians by Adrian and Antonine; and of edicts promulged by them, to restrain the cruelties to which that virtuous and innocent sect had been long exposed. But these instances of commiseration and clemency were no more than so many special suspensions of those bloody practices, which these very Emperors, excellent as they otherwise were, too frequently promoted¹⁵⁹. So far from being any tests of the gentle and forbearing temper of the popular religion then prevailing, they amount to the clearest demonstration, that a malevolent spirit of persecution and intolerance pervaded the Roman nation at large; and that religious liberty constituted no avowed part of the system of paganism; how artfully soever its cause may have been defended by the wit and ingenuity of its modern advocates.

Hadrian,
A. D. 117.

Trajan seems to have purposely avoided the nomination of a successor; though his reasons for so doing cannot easily be discovered.

¹⁵⁹ Ὁ γὰρ Ἀντωνίνος ὁμολογεῖται παρὰ πάντων καλὸς τε καὶ αγαθὸς γινώσκειν, καὶ οὐτε τῶν ἄλλων ὑπέκρινεν τισὶ βάρυν, ὥστε Χριστιανούς. ἐπαχθὴς, ἀλλὰ πολλὰν τιμὰν τούτοις; ἡμεῖς αἰδῶ, καὶ τῇ τοῦ Ἀδριανοῦ τιμῇ, ἣν ἐκείνος ἐτίμα Χριστιανούς, προστιδίδει. ὁ γὰρ τοῦ Παμφίλου Εὐσεβίου καὶ ἐπιστολὰς τινὰς τοῦ

Ἀδριανοῦ ἐν τῇ ἐκκλησιαστικῇ αὐτοῦ ἱστορίᾳ παραβιβάζει, ἐν αἷς ἐκεῖνος διαμαρτυρεῖται τοῖς λυποῦσι τι ἡ κατηγοροῦσι τῶν Χριστιανῶν δίκαια ἀπειλὴν, καὶ τὸν Ἡρακλεῖα πομπυμένον ὡς τυχεῖν τιμωρίας. Xiph. in Dio. 70. 3.

Having never explicitly declared his sentiments upon that nice subject, it gave occasion to a variety of conjectures; some being of opinion that he meant to imitate the example of Alexander, and to die without any certain successor at all; others, that his design was to send a message to the senate, requesting them to take the appointment upon themselves, only limiting their choice to the best of those whom he should name for that purpose¹⁶⁰. It might indeed have been expected, that, as he had no issue of his own, a natural partiality would have induced him to give a preference to Hadrian, his fellow-citizen and near relation; whom he had educated as his child, and had distinguished by many peculiar instances of personal esteem, as well as by many honorable employments, both civil and military. But it is most probable, that, knowing the irregularity of his character, he was fearful of committing the complicated concerns of so vast an empire to a governor, in whose steadiness he could not repose an entire confidence¹⁶¹; and that this struggle between private affection and public duty was the true cause of his indetermination.

The Emperor, however, having ended his days at a great distance from the capital, Plotina, who entered warmly into the interests of Hadrian, concealed the death of her husband for some days, while she counterfeited letters of adoption; and, by an act of authority, which she had never before assumed in any matter of so public a nature, transmitted them to the senate, not signed by Trajan's hand, but by her own. On the receipt of these Hadrian was immediately proclaimed Cæsar and Emperor; and appearing at once

¹⁶⁰ "Multi quidem dicunt, Trajanum in animo id habuisse, ut, exemplo Alexandri Macedonis, sine certo successore moritur: multi, ad senatum eum orationem voluisse mittere, petiturum, ut, si quid ei evenisset, principem Romanæ reipublicæ senatus daret; additis duntaxat nominibus, ex quibus optimum idem senatus eligeret."

Spart. in Hadr. 4.

¹⁶¹ Ἀδριανὸς δὲ, ὑπὸ μὲν Τραϊανοῦ οὐκ ἐκτρέφετο. ἢ μὲν γὰρ πολὺν αὐτοῦ, καὶ ἐπὶ τροπῇ ὑπ' αὐτοῦ, γένος δ' οὐ κοινῶς, καὶ ἀδελφίδην αὐτοῦ ἐγγαμνηκεν. το, τὴν συμπαρ, συνεκ αὐτῇ καὶ συνδραστή, τῇ τε Συρία ἐπὶ τῷ Παρθικῷ πολέμῳ προσεταχθῆ. οὐ μόνον οὐτ' ἄλλο τι ἐξαιρετικὸν παρ' αὐτοῦ ἐλάττει, οὐδ' ὑπάτος ἐν πρώτοις ἐγένετο. Dio Cass. 69. 1.

at the head of a powerful army, entirely prevented all further competition¹⁶².

Thus secured, his first business was to obtain the approbation of the senate, which he effected by a conciliatory epistle, wherein he humbly solicited their confirmation of his appointment; and, as a flattering instance of his moderation, disclaimed all those honors which had been usually decreed to his predecessors on their accession; declaring that he would accept of none, but such as they should hereafter please to grant at his own petition¹⁶³. These were followed in due time with other very solemn assurances, that he would make the public good the sole measure of his actions¹⁶⁴; that he would in all things pay the utmost deference to their sentiments, and would deprive none of their lives, but under a sentence pronounced by themselves¹⁶⁵. In token of his sincerity, during his

¹⁶² This anecdote stands upon peculiarly good authority; having been delivered to the Greek historian by his own father, who was living at the time, and very high in the confidence of Hadrian. Ἀλλὰ καὶ Καίσαρ αὐτοῦ καὶ αὐτοκράτορα, τοῦ Τραϊανοῦ ἀπαιδὸς μεταλλάξαντος, ὁ, τὴν Ἀθήνας, πολίτης αὐτοῦ ἐν, καὶ ἐπιτροπὸς γεγονώς, καὶ ἡ Πλωτίνῃ ἐξ ἐρωτικῆς φιλίας, πλησίον τε οὖσα, καὶ δυναμὶν πολλὴν ἔχουσα, ἀπιδύ-
ξαν. ὁ γὰρ πατὴρ μου Ἀπριανὸς, τῆς Κιλικίας ἀρχὴς, πάντα τὰ κατ' αὐτοῦ ἐμμελῶς σαφῶς ἔλεγε διὰ τὰς ἀλλὰ ὡς ἴκατα, καὶ ὅτι ὁ θάνατος τοῦ Τραϊανοῦ ἡμέρας τρεῖς δια τοῦτο συνεμυφθῆναι, ἢ ἡ ποιητικὴ προειφοιτήσῃ. ἰδὲ τούτου καὶ ἐκ τῶν πρὸς τῇ βουλῇ γραμμάτων αὐτοῦ· τὰς γὰρ ἐπιστο-
λαὶς οὐκ αὐτός, ἀλλ' ἡ Πλωτίνῃ ὑπεγράφη· ὅπως ἐπ' οὐδενὸς ἀλλοῦ ἐπιποιήσῃ. Dio Cass. 69. 1.
“Defuncto Trajano, Ælius Hadrianus cre-
“atus est princeps; sine aliqua quidem vo-
“luntate Trajani, sed operam dante Plotina,
“Trajani uxore. Nam cum Trajanus,
“quanquam consobrinæ filium, vivens nolu-
“erat adoptare.” Eutr. 8. 3. The other Latin historians are not so clear with regard to this fact, but speak of it with less degree

of certainty than it deserved. “His virtu-
“tibus actio imperio—morbo periit (sc.
“Trajanus), grandæva ætate, adscito prius.
“ad imperium Hadriano cive propinquoque:
“—Quanquam alii Plotinæ Trajani con-
“jugis favore imperium assequutum putent,
“quæ viri testamento hæredem regni insti-
“tutum simulârat.” Sex. Aur. Vict. de-
Cæf. 13. “Nec desunt, qui factione Plo-
“tinæ, mortuo jam Trajano, Hadrianum in:
“adoptionem adscitum esse prodiderint;
“supposito, qui pro Trajano fessâ voce lo-
“queretur.” Spart. in Hadr. 4.

¹⁶³ Εγγράφη δὲ πρὸς τὴν βουλὴν ὁ Ἀδριανὸς, ἀξίων βεβαιωθῆναι αὐτῇ τῆς ἡγεμονίας καὶ παρ' ἐκείνης, καὶ ἀπαγορεύει μηδὲν αὐτῇ μὴτε τότε μὴτε ἀλλοτε τιμὴν δὴ τινα φερεῖν (διὰ μὴδὲν γιγνέσθαι) ψευδῶσαι, πλην ἂν τι αὐτὸς ποτε ἀξίωσιν. Dio Cass. 69. 2.

¹⁶⁴ “In concione et in senatu sæpe dixit, Ita
“se rempublicam gesturum, ut sciret populi rem:
“esse, non propriam.” Spart. in Hadr. 8.

¹⁶⁵ “In senatu juravit, se nunquam senato-
“rem, nisi ex senatûs sententia, puniturum.”
Id. ib. 7. Καὶ ἐν ἐπιστολῇ τῇ πρὸς τὰς ἀλλὰ μεγα-
λοφρονησάμενος, καὶ ἐκπομπῆς, μὴτε τι ἐξ ὧν τῶν
δημοσίων.

his residence in or near Rome, he frequented their legal meetings with the strictest punctuality; and was extremely scrupulous about the creation of new members, that being the highest honor in his power to confer.

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It was likewise the custom in those days, for the prince, when he chose to preside in the courts of justice, to demand the attendance both of the senators and knights as his grand council, by whose united opinion he regulated his decrees. But Hadrian would no longer suffer the inferior order, either in his presence or absence, to pass judgment upon a senator; and severely censured all former princes, who had been deficient in these marks of respect to that supreme body¹⁶⁶. Being, however, of a very suspicious and envious nature, he conceived prejudices, upon the slightest surmises, against those whom he had formerly distinguished by the strongest proofs of his favor and friendship; and at different periods of his reign put to death many illustrious and worthy persons, from a mere jealousy of their wealth, power, and reputation¹⁶⁷.

His passion for glory and applause was without bounds; and the quickness of his parts, and vigor of his understanding, aided by an indefatigable industry, made him superior to every difficulty

δημοσίου συμφέροντος ποιήσιν, μητι βουλευτὴν τινα σπουδάζειν, καὶ ἐξωλεῖν αὐτὸν, αὐ καὶ ὅτιον αὐτῶν ἐλάβη προσπαράσας μιν. Dio Cass. 69. 2.

¹⁶⁶ Ἐπράττε δι' καὶ διὰ τοῦ βουλευτηρίου πάλαι τὰ μεγάλα καὶ ἀναγκαιοτάτα. Dio Cass. 69. 7.

"Senatui legitimo, cum in urbe vel juxta urbem esset, semper interfuit. Senatus fastigium in tantum extulit, difficile faciens senatores, ut cum Attianum ex præfecto prætorii, ornamentis consularibus præditum, faceret senatorem, nihil se amplius habere quod in eum conferri posset, ostenderit. Equites Romanos, nec sine se de senatoribus, nec secum judicare permittit. Erat enim tunc mos, ut, cum princeps causas cognosceret, et senatores et equites Romanos in consilium vocaret,

"sententiam ex omnium deliberatione proferret. Execratus est denique principes, qui minus senatoribus detulissent." Spart. in Hadr. 8.

¹⁶⁷ "Amicos ditavit, et quidem non petentes; cum petentibus nihil non negaret. Idem tamen facile de amicis, quicquid infurabatur, audivit, atque ideo prope cunctos vel amicissimos, vel eos quos summis honoribus evexit, postea ut hostium loco habuit." Spart. in Hadr. 15.

Ἀλλ' ὁμῶς διὰ τινος φόβου ἀφίσταντο αὐτῷ, ὥς ἐν ἀρχῇ τῆς ἡγεμονίας καὶ πρὸς τὴν τελευτὴν τοῦ βίου πεποθήσθαι, διεβλήθη. — οἱ δὲ, ἐφ' ἑτέροις δὴ τισὶν ἐγκλημασιν, διὰ μεγάλα δυνάμει, καὶ πλῆθος καὶ δόξης ἐν ἡλικίᾳ. Dio Cass. 69. 2.

S f

both

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both of war and politics; conducting him with ease through the most intricate recesses of every liberal art and science, that could adorn either a prince or a private man. But these laudable accomplishments were still debased by the same mean spirit of envy, which caused him to hate and oppress all those who aspired to eminence in the same paths with himself¹⁶⁸: though he continued to honour and reward all others, who did not stand in the way of his own ambition¹⁶⁹.

Having spoken thus freely of his imperfections, justice requires of us to represent him likewise on the more favorable side of his character; from whence it is evident, that his public virtues made ample atonement for his private failings; and that in point of military skill, political knowledge, and active zeal for the glory and welfare of his country, he had few equals, and no superior. The undefined extent, to which the empire had been increased by the prowess of Trajan, served only to exhaust its internal strength, and make the defence of the whole much more precarious. Hadrian, therefore, very prudently fixed the eastern boundary at the Tigris and Euphrates; relinquishing to their native masters all the half-conquered regions beyond those rivers, upon the same wise principle that Cato formerly pronounced the Macedonians free, because it was not then in the power of Rome to hold them in sub-

¹⁶⁸ Φιλοτιμία απλήν εχρητο, και κατά τούτο και τ' άλλα πάντα και τα βραχυτάτα επιτηδύει. και γὰρ ἐκλάσσει και γράφει, και ουδὲν ὅ, τι οὐκ εἰρημικόν και πολέμικόν, και βασιλικόν και ἰδιωτικόν ἰδὲναι ἐλεγει. και τούτο μὲν ουδὲν πού τοις ἀνδράποιν ἐδραπτει, ὁ δὲ δὴ φθόρος αὐτοῦ δυνάστεος ἐς πάντα τοὺς τοι προεχόντας ἐν, πολλοὺς μὲν καθεύδει, συχνοὺς δὲ και ἀπώλει. βουλομένης γὰρ καθύπερθε καὶ παρὰ περιμῆναι, ἡμῶν τοις ἐν τῇ ὑπερκειρομένης. Dio Cass. 69. 3. "Atheniensium studia moresque haufit." Sex. Aur. Vict. ep. 1. "Fuit poematum et literarum omnium studiosis-

simus; arithmeticae, geometriae, picturae peritissimus." Spart. in Hadr. 14. "Professores omnium artium semper, ut doctior, rixit, contempsit, obtrivit." Id. 15.

¹⁶⁹ "Quamvis esset in reprehendis musicis, tragicis, comicis, grammariis, rhetoricis, oratoribus, facilis; tamen omnes professores et honoravit, et divites fecit: licet eos questionibus semper agitaverit. — Doctores, qui professioni suae inhabiles videntur, ditatos honoratosque a professione dimisit." Spart. in Hadr. 16.

jection.

jection¹⁷⁰. Having thus secured the outskirts, he was no less careful to preserve the remainder in peace¹⁷¹. For this purpose, being blessed with an uncommon activity of body, he traversed every part of his dominions on foot, establishing throughout a strict military discipline, but treating all the subject or dependent nations with signal humanity and generosity; rectifying many abuses and defects in their constitutions; and protecting their frontiers by strong barriers; among which this island was not forgotten, as appears from many noble remains still bearing his name¹⁷².

¹⁷⁰ "Adeptus imperium, ad priscum se statim morem instituit; et tenendæ per orbem terrarum paci operam intendit. Nam deficientibus his nationibus quas Trajanus subegerat, Mauri laceſcebant, Sarmatæ bellum inferebant, Britanni teneri sub Romana ditione non poterant, Ægyptus seditionibus urgebatur, Lycia denique ac Palæstina rebelles animos efferebant. Quare omnia trans Euphratem ac Tigrim reliquit, exemplo, ut dicebat, Catonis, qui Macedonas liberos pronuntiavit, quia teneri non poterant." Spart. in Hadr. 5. And again, "Inter hæc tamen et multas provincias a Trajano acquiſitas reliquit." Id. 9. There is one author, however, who has very injudiciously ascribed this act of prudence to mere envy of the glory of Trajan; "Trajani gloriæ invidens, statim provincias tres reliquit, quas Trajanus addiderat; et de Assyria, Mesopotamia, et Armenia, revocavit exercitus; ac finem imperii esse voluit Euphratem." Eutr. 8. 3.

¹⁷¹ "Pacis magis quam belli cupidus." Spart. in Hadr. 10. "Pacem omni imperii sui tempore habuit, semel tantum per præsidem dimicavit." Eutr. 8. 3. Μητι τινα πολέμοι ταραξεί, και τους οὐδας παύσαι. Dio Cass. 69. 5.

¹⁷² "Immensi laboris, quippe qui provincias omnes pedibus circumieris, agmen

"comitantium prævertens, cum oppida universa restitueret, augeret ordinibus." Sex. Aur. Vict. 14. "Orbem Romanum circumivit, et multa ædificavit." Eutr. 8. 3. "Circumiens provincias, procuratores et præfides pro factis supplicia affecit: ita severe, ut accusatores per se crederetur immittere." Spart. in Hadr. 13. "Militem, quasi bellum immineret, exercuit." — "Labantem disciplinam, incuria superiorum principum, retinuit." Id. ib. 10. "Conversis regio more militibus, Britanniam petiit: in qua multa correxit, murumque per octoginta millia passuum primum duxit, qui barbaros Romanosque divideret." Id. ib. 11. Τα γραῖναια ἀκροβυσθα ἡσκησεν, ὡς ἰσχυοῦσα μὴ ἀπειθῆναι, μητι ὑβρίζειν· και τὰς πόλεις τὰς τι συμμαχίδας και τὰς ὑπηκόους μεγαλοπρεπείῃσιν ἀφείλησιν. πολλὰς μὲν γὰρ και οὐδὲν αὐτῶν, ὅσας οὐδὲς ἄλλος αὐτοκρατορ, παύσαι δι ὡς ἐπὶ τὴν περικουρησιν, ταῖς μὲν ὕδασι, ταῖς δὲ λιμνῇσιν, οἷον τι και ἔργα, και χρηματῶν, και τιμας ἀλλὰς ἀλλὰς διδοῦς. Dio Cass. 69. 5. See also c. 9. where the historian enlarges still more upon these exploits, and adds, "Οὕτω και τῶ ἔργῳ και τοῖς παραγγέλμασι πᾶν το γραιτῶδες δι' ὅλης τῆς ἀρχῆς ἡσκησιν και κατεκοσμήσιν, ὥστε και νῦν τα τότε ὑπ' αὐτοῦ ἀχθῶντα, τοιοῦτο σφίσι τῆς γραιτίας ἐπὶ· και δια τοῦτο και μαλιστα, ἐν ἐκτῇ το πλείστον πρὸς τοὺς ἀλλοφύλους διγυμνῶντο."

Though he signalized his own character by divers acts of clemency, it was certainly not the general turn of his disposition; as the common people were oftener the objects of his severity than of his kindness¹⁷³. He made amends, however, by several instances of true generosity; particularly by remitting vast debts due to the exchequer; by burning the securities which had been given to Trajan; and likewise by renouncing any personal claim to forfeitures on the condemnation of criminals, all which he commanded to be brought into the public treasury¹⁷⁴. But he is most of all to be commended for his diligent and upright dispensation of justice; which he frequently administered in the public courts in his own person, assisted by the consuls, prætors, and other assessors, selected from among the wisest of the senators¹⁷⁵, and some of the ablest professors of the law¹⁷⁶, whose names have been transmitted to posterity with the highest honor. To check, likewise, the ostentatious pomp and extravagance of the judges, which were strong temptations to corruption, he restrained their expences, and reduced them all to the antient standard¹⁷⁷.

¹⁷³ "Non magnam clementiæ gloriam habuit." Eutr. 8. 3. Ηγε δι και τον δημον των Ρωμαίων μετρίως μάλλον, η δωπνεντικός. Dio Cass. 69. 6.

¹⁷⁴ "Ad colligendam autem gratiam nihil prætermittens, infinitam pecuniam, quæ fisco debebatur, privatis debitoribus in urbe atque Italia, in provinciis yero, etiam ex reliquis ingentes summas remisit; syngraphis in foro divi Trajani, quo magis securitas omnibus roboraretur, incensis. Damnatorum bona in fiscum privatum redigi vetuit, omni summa in ærarii publico recepta." Spart. in Hadr. 7.

¹⁷⁵ "Causas Romæ atque in provinciis frequenter audivit; adhibitis consilio suo

consulibus atque prætoribus et optimis senatoribus." Id. ib. 22. Εδικάζε μετὰ των πρεσβων, τότε μιν ει τῷ παλατίῳ, τότε δι ει τῇ ἀγορᾷ, τῷ τε Παιδίῳ, και αλλοδι πολλαχοδι, ἀπο βηματός, ὡς τε δημοσινεύσαι τα γνηγομένα και τοις ὑπατοῖς εἰν ὅτι δικάζουσι συγγρηγοῖσι ει τι ταις ἱπποδρομιαῖς αὐτοῦς στίμα. Dio Cass. 69. 7.

¹⁷⁶ "Cum judicaret, in consilio habuit non amicos suos, aut comites solum, sed jurisconsultos, et præcipue Julium Celsum, Salvium Julianum, Neratium Priscum, aliosque: quos tamen senatus omnes probasset." Spart. in Hadr. 18.

¹⁷⁷ "Judicum sumptus constituit, et ad antiquum morem redegit." Spart. in Hadr. 22.

No prince was more attentive, than himself, to the regulation of the internal police, both civil and military; all which he settled upon so firm and useful a basis, that the offices by him established continued, with little variation, through several succeeding centuries¹⁷⁸. The new laws, enacted under his special authority, were numerous, liberal, and beneficial¹⁷⁹. But he has derived still greater honor from his undertaking to digest and methodize the antient laws, the confused state of which had been an evil long visible to every person of penetration; though the distractions of former times had hitherto baffled all endeavours to effect a complete reformation. In this important work he engaged with a truly patriotic ardor and assiduity; but lived to finish no more than the *Perpetual Edict*, the nature whereof will be explained more at large upon a future occasion. This, however, though but a small part of the whole, was of infinite service to the civil constitution; as it suggested many similar attempts to succeeding princes; and served for the foundation of that celebrated collection, which Justinian more happily accomplished.

Upon the whole, though the inconstancy of his temper¹⁸⁰ destroyed much of the merit of his good actions, and rendered him less amiable, as a private member of society; yet his unwearied sollicitude for the glory and interest of the Roman empire; his moderation and prudence in the exercise of his authority; and the felicity which his subjects actually enjoyed under his government, certainly entitle him, with all due allowances for human frailties, to the character of a respectable and useful magistrate.

¹⁷⁸ "Officia sane publica, et palatina, nec non militiæ in eam formam statuit, quæ paucis per Constantinum immutatis hodie perierat." Sex. Aur. Vict. ep. 14.

¹⁷⁹ Some of the chief of them are enumerated by Spart. in Hadr. 18.

¹⁸⁰ "Varius, multiplex, multiformis." Sex. Aur. Vict. ep. 14.

Hadrian.

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Hadrian had adopted Ælius Verus for his son and successor¹⁸¹; who not long surviving his nomination, the dying prince summoned the chiefs of the senate to attend him; and having with great serenity informed them of his loss, told them he had now fixed upon another Emperor, whom he could safely propose to them, as an eminent pattern of benignity and prudence: one, whose mind was not liable to be led astray by the impetuosity of youth, nor to grow torpid from the infirmities of old age: who had been educated in a strict course of obedience to the laws of his country; and who, from the manner in which he had already acquitted himself in the execution of the highest offices of state, had displayed a consummate knowledge of the forms and principles of the ancient constitution; and had afforded the strongest reason to believe, that he would continue to govern the empire with equal wisdom and integrity. He then named Titus Antoninus Fulvius Boionius, though with some degree of apprehension, that he would with difficulty be persuaded to accept the offer¹⁸².

Antoninus Pius,
A. D. 138.

This prince is better known to posterity by the name of Antoninus Pius; a title which he derived from a variety of honorable causes, but principally from the extraordinary benevolence of his disposition¹⁸³.

¹⁸¹ "Adoptatus Ælius Verus ab Hadriano, eo tempore, quo jam—parum vigebat, et de successore necessario cogitabat." Spart. in Æl. Vero. 3.

¹⁸² Επει δὲ συνέβη τῷ Ἀδριανῷ τῷ Κορνηλοῦ ἐξαιφθίης ἐγκαταλειφθῆναι ὑπὸ τοῦ αἵματος πολλοὺς τῶν καὶ ἀδελφῶν ἐκπαιστούς, συνεκάλεσε τοὺς πρώτους καὶ ἀξιολόγους τῶν βουλευτῶν οἰκαδὶ καὶ πατακισμένους εἰπεῖν αὐτοῖς ταῦτα· — "Επει δὲ ἐκείνῳ τὸ δαίμονος ἡμῶν ἀφείλετο, ἔνρον αὐτῷ ἐκείνου αὐτοκράτορα ὑμῖν, ὃν δίδωμι, ευγενή, πρᾶον, εὐκλειῶν, φρόνιμον, μηδ' ὑπὸ κοίτης προπέλει, μηδ' ὑπὸ γῆρας ἀμύλας ποιῆσαι εἰς δυνάμειον ἡγμένον κατὰ τοὺς νόμους, ὑψιστάμενον κατὰ τὰ πατρία, ὥς μὴ τι ἀγνοίῃ τῶν ἐκ τῆς ἀρχῆς φερόμεν, καὶ πᾶσιν

"αὐτοῖς καλῶς δυνασθαι χρυσαρθᾶν. Λέγων δὲ Ἀδριανὸς Ἀντωνίνῳ τούτῳ· ὅς ἐστι καὶ τὰς μελέτας οἰδᾶ ἀπαραμνηστὸν τὸ ἀνδρῶν οὐτὰ, καὶ πορρεῖν τοιαύτης ἐκδυσμας καθεστῆκατα, ἀλλ' οὐτὶ γὰρ καὶ ἀφροτιστικῶν νομῶν οὐτὶ ἡμῶν οὐτὶ ὑμῶν, ἀλλὰ καὶ ἀποστὰ τῆς ἀρχῆς ὑποδείξειν δαί." Dio Cass. 69. 20. "Maxime, cum et semper rempublicam bene egisset Antoninus, et in proconsulatu se sanctum gravemque prae-buisset." Jul. Cap. in Ant. Pio. 4.

¹⁸³ "Pius cognominatus est a senatu,—quod vere natura clementissimus, et nihil temporibus suis asperum fecit." Id. ib. 2. "Pius propter clementiam dictus est." Eutr. 8. 4.

If we can believe the antient historians, both his mind and body were a complete assemblage of perfection, without the smallest taint of vice or deformity¹⁸⁴. Great as were the virtues of his private life, they shone with brighter lustre in the imperial throne¹⁸⁵; and breathed a spirit of moderation and goodwill to all mankind, which the fierce and heroic conquerors of the Roman world too often despised as unprincely and pusillanimous.

Military glory seems to have occupied but a very small place in this prince's affections, he being much more anxious to defend his territories than to enlarge them¹⁸⁶; and thinking it greater honor to preserve the life of a single citizen, than to destroy a thousand enemies¹⁸⁷. It is true, that necessity obliged him to wage some wars; but they were always conducted by his generals¹⁸⁸, while his own attention was employed, for more than twenty years, in maintaining, as far as possible, the tranquillity of the empire; from whence he was justly compared to Numa, as Trajan was to Romulus¹⁸⁹. This unalterable love of peace, wholly untinctured with timidity, commanded the respect of the most determined and inveterate enemies of the Roman name, so that he was considered as

¹⁸⁴ "Hunc fere nulla victorum labe maculavit." Sex. Aur. Vict. de Cæs. 15.
 "Tantæ bonitatis in principatu fuit, ut
 "hand dubie sine exemplo vixerit." Id.
 epit. 15. "Nulli acerbis, cunctis benignus."
 Eutr. 8. 4. "Fuit vir forma
 "conspicuus, ingenio clarus, moribus clemens,
 "nobilis vultu, et placidus ingenio,
 "singularis eloquentiæ, nitidæ literaturæ,
 "præcipue sobrius: diligens agri cultor,
 "mitis, largus, alieni abstinens; et omnia
 "hæc cum mensura, et sine jactantia." Jul.
 Cap. in Ant. Pio. 2.

¹⁸⁵ "Vixit ingenti honestate privatus:
 "majori, in imperio." Eutr. 8. 4.

¹⁸⁶ "In re militari moderata gloria, defendere
 "magis provincias, quam amplificare studebat."
 Eutr. 8. 4.

¹⁸⁷ "Tantum sane autoritatis apud exteras
 "gentes habuit; cum semper amaverit pacem,
 "eo usque, ut Scipionis sententiam frequentârit,
 "qua ille dicebat, *Malle se unum civem servare, quam mille hostes occidere.*"
 Jul. Cap. in Ant. Pio. 9.

¹⁸⁸ "Per legatos suos plurima bella gestit."
 Jul. Cap. in Ant. Pio. 5.

¹⁸⁹ "Vir insignis qui merito Numæ Pompilio conferatur,
 "ita ut Romulo Trajanus æquetur." Eutr. 8. 4.
 "Quamvis eum Numæ contulerit ætas sua, cum orbem
 "terræ nullo bello per annos viginti tres auctoritate
 "sola rexerit." Sex. Aur. Vict. epit. 15.
 "In cunctis postremo laudabilis, et qui merito
 "Numæ Pompilio, ex bonorum sententia, comparatur."
 Jul. Cap. in Ant. Pio. 2.

a common parent and patron of the adjacent nations; and was even chosen the judge and arbitrator, to compose the differences among foreign potentates¹⁹⁰. He governed the dependent countries, and managed their concerns, with the same care and tenderness as if they had been part of his own household; and thus made them all flourishing and happy¹⁹¹. He gave express directions to his officers to be moderate in collecting the tributes; lent a willing ear to all complaints that were made against them; obliged those, who had been guilty of any exactions, to render a particular account of their conduct; and never shewed any satisfaction in those gains, whereby a provincial subject was oppressed¹⁹². He bestowed wealth and honor upon the præfects with a liberal hand; but, if obliged to condemn any of them to death for extortion, he relinquished the forfeited estates to their children, upon their making restitution to the sufferers¹⁹³.

The stateliness of the imperial character he tempered with the utmost courtesy, in which he appeared to great advantage over the less condescending officers of his court; who, as he did nothing

¹⁹⁰ "Adeo trementibus eum atque amantibus cunctis regibus, nationibusque, et populis, ut parentem seu patronum magis quam dominum imperatoremve reputarent: omnesque uno ore in celestium morem propitium optantes, de controversiis inter se judicem poscerent. Ad quem etiam Indi, Bactri, Hyrcani legatos misere, justitia tanti imperatoris comperta, quam ornabat vultu sereno et pulchro, procerus membra, decenter validus." Sex. Aur. Vict. 15. "Regibus amicis venerabilis non minus quam terribilis: adeo ut barbarorum plurimæ nationes dispositis armis, ad eum controversias suas litesque deferrent, sententiæque ejus parerent." Eutr. 8. 4.

¹⁹¹ "Tanta sane diligentia subjectos sibi

"populos rexit, ut omnia et omnes, quasi sua essent, curaret. Provinciæ sub eo cunctæ floruerunt." Jul. Cap. in Ant. Pio. 7.

¹⁹² "Procuratores suos modeste suscipere tributa jussit; excedentes modum, rationem factorum suorum reddere præcepit: nec unquam lætatus est lucro, quo provincialis oppressus est. Contra procuratores suos conquerentes libenter audivit." Id. ib. 6.

¹⁹³ "Præfectos suos et locupletavit, et ornamentis consularibus donavit. Si quos repetundarum damnavit, eorum liberis bona paterna restituit: ea tamen lege, ut illi provincialibus redderent, quod parentes acceperant." Id. ib. 10.

by

by agents, and abhorred all clandestine transactions, could no longer terrify the people, nor convert the favors of their master to their own private advantage¹⁹⁴. Such as performed no duties he deprived of their salaries; saying, that nothing could be more sordid, or even cruel, than for any one to prey upon the public, who, by his labor, contributed nothing to its welfare¹⁹⁵.

In the administration of the civil government he affected no independence; but gave an account of whatever he did either in conjunction with the fathers, or by his own authority¹⁹⁶; and paid the same respect to the senate after he became Emperor, as he wished a prince to shew to himself, when in a private station¹⁹⁷. He sought out men of the most distinguished integrity and abilities, for his coadjutors; professing the highest esteem for the upright and virtuous, with no less detestation of the undeserving, though without the least tincture of bitterness¹⁹⁸: and, with the assistance of such learned counsellors, he improved the constitution by the addition of many useful laws¹⁹⁹.

Superior to every mean emotion of suspicion, and too generous to avenge personal injuries, he would never permit any inquiries to be made of conspiracies formed against himself²⁰⁰. But, as guardian of

¹⁹⁴ "Imperatorium fastigium ad summam civilitatem deduxit; unde plus crevit recusantibus aulicis ministris: qui, illo nihil per internuntios agente, nec terrere poterant homines aliquando, nec ea, quæ occulta non erant, vendere." Jul. Cap. in Ant. Pio. 6.

¹⁹⁵ "Salaria multis subtrahit, quos otiosos videbat accipere; dicens, *Nil esse fordidius, imo crudelius, quam si rempublicam quis arroderet, qui nihil in eam suo labore conferret.*" Id. ib. 7.

¹⁹⁶ "Omnium, quæ gessit, et in senatu et per edicta, rationem reddidit." Id. ib. 12.

¹⁹⁷ "Senatui tantum detulit imperator, quantum, cum privatus esset, deferri sibi

ab alio principe optavit." Id. ib. 6.

¹⁹⁸ "Viros justissimos ad administrandam rempublicam quærens, bonis honorem habens, improbos sine aliqua acerbitate detestans." Eutr. 8. 4.

¹⁹⁹ "Multa de jure sanxit: ususque est jurisperitis, Vinidio Vero, Salvio Valente, Volusio Metiano, Ulpio Marcello, et Ja- voleno." Jul. Cap. in Ant. Pio. 12.

²⁰⁰ "Adeo mansuetus, ut instantibus pa- tribus ad eos qui contra eum conjuraverant, persequendos, compresserit quæstionem, præfatus, necesse non esse, sceleris in semetipsum cupidos, pertinacius indagari." Sex. Aur. Vict. epit. 15.

BOOK
III

the public peace, he carefully suppressed all popular seditions; not indeed with an arbitrary spirit of cruelty, but with a strictness, duly moderated by humanity²⁰¹. The title of *Father of his Country*, which modesty at first induced him to decline, he accepted in the end, with the warmest expressions of satisfaction and gratitude²⁰²; and shewed his true feeling of so significant a compliment, in the parental regard and affection which he extended to all parts of his dominions²⁰³.

Finding the hand of death upon him, his whole conversation was employed upon his beloved country, and upon those kings who had incurred his displeasure²⁰⁴; and having recommended the commonwealth, together with his only daughter, to the care of his adopted successor, he calmly resigned his breath²⁰⁵, amidst the sincere lamentations of his affectionate subjects, who instantly gave him a place among the gods; and, with the deepest impression of his exemplary virtues, decreed him every honor which had hitherto been conferred upon the worthiest of his predecessors²⁰⁶.

M. Aurelius
Antoninus
and L. Verus,
A. D. 161.

Marcus Aurelius Antoninus, surnamed the Philosopher, having succeeded by the right of adoption, assumed Lucius Verus for his partner; which joint-administration of two princes with equal authority, was an entire novelty in the Roman constitution²⁰⁷: at

²⁰¹ "Seditiones ubicunque factas, non crudelitate, sed modestia et gravitate com-
proffit." Jul. Cap. in Ant. Pio. 12.

²⁰² "*Patri Patriæ* nomen, delatum a senatu, quod primo distulerat, cum ingenti gratiarum actione suscepit." Id. ib. 6.

²⁰³ "Quæ incredibili diligentia ad speciem optimi patrisfamilias exsequebatur."

Sex. Aur. Vict. epit. 15.

²⁰⁴ "Alienatus in febris, nihil aliud, quam de republica, et de his regibus, quibus irascebatur, loquutus est." Jul. Cap. in Ant. Pio. 12.

²⁰⁵ "Tertia die, cum se gravari videret, Marco Antonino, rempublicam et filiam, presentibus praefectis, commendavit.—

Atque ita conversus quasi dormiret, spiritum reddidit." Id. ib.

²⁰⁶ "A senatu Divus est appellatus; cunctis certatim adniventibus: cum omnes ejus pietatem, clementiam, ingenium, sanctimoniam, laudarent. Decreti etiam sunt omnes honores, qui optimis principibus ante delati sunt." Id. ib. 13.

²⁰⁷ Μαρκος ὁ Αἰώνιος, συνεὶς τοῦ Αἰωνίου αἰῶνος τελευτήσας Αἰώνιος τῆς ἀρχῆς ἵσχυς, θεο-
ελάβη ἐκ παλαιῶν τοῦ κράτους ἡδὺς τοῦ Λου-
κίου Κορνήλιου υἱοῦ Λουκίου Βερῶν. Dio Cass. 71.
1. "Aurelius, socero—mortuo—fratrem
Lucium Verum in societatem potentiae
accepit." Sex. Aur. Vict. de Cæs. 16.
id. epit. 15.

present, however, it was productive of no inconvenience, as the gentleness of their behaviour alleviated even the loss of the humane and virtuous Antonine²⁰⁸. But, in a course of years, as the practice became common, and was exercised without due reflexion, or proper attention to the characters of the persons thus associated, it was the source of infinite confusion, by dividing the ruling power, and by destroying that unity of interests, which is essential to the existence of a monarchy; and may, therefore, be very justly reckoned among the principal causes which led to the decline of this once potent and flourishing empire²⁰⁹.

It should seem that Aurelius was induced to accept the government by the pressing intreaties of the senate, rather than by his own inclination; and that he made choice of Verus²¹⁰, who was younger, and of a more military turn²¹¹, to relieve him from the toils of the camp; and to furnish him with more leisure to pursue his studies, and to cultivate the affections of his subjects²¹². This union continued, in all appearance, to the mutual satisfaction of both, as well as to the general good of the empire, for about eleven years; when Verus was suddenly snatched away, almost in the arms of his

²⁰⁸ "Adepti imperium, ita civiliter se ambo egerunt, ut lenitatem Pii nemo deraret." Jul. Cap. in M. Aur. 8.

²⁰⁹ "Tum primum Romana respublica duobus, æquo jure imperium administrantibus, paruit; cum usque ad eum singulos semper habuisset Augustos." Eutr. 8. 5. "Ex eo pariter ceperunt rempublicam regere. Tumque primum Romanum imperium duos Augustos habere cepit." Jul. Cap. in M. Aur. 7.

²¹⁰ "Post excessum Divi Pii, a senatu coactus regimen publicum capere, fratrem sibi participem in imperio designavit." Id. ib.

²¹¹ "Ὁ δὲ Λουκιος, ἔχοντο τε καὶ πικτερός ἦν, καὶ στρατιωτικὸς τε ἔργους καταλλοττερός. ὧν—αὐτοί—

ὁ Μάρκος ποιήσας ἐκ τῶν πρεσβυτέρων ἐπέμψεν πολλοὺς. Dio Cass. 71. 1.

²¹² Ἄλλος μὲν ἀσθενης ἦν τῷ σώματι, καὶ τὰ πολλὰ λογικῶς σχολάζει. λογίσαι γὰρ, καὶ αυτοκρατορῶν ἢ, μὴ αἰδισθαι μὴδὲ ὀκνεῖν ἐς διδασκαλοῦ φοιτᾷ, ἀλλὰ καὶ Σιζύφῃ προσπίπτει τῇ ἐκ Βοιωτίας φιλοσοφῇ, καὶ ἐς ἀκροασὶν τῶν ἑπτοῶν Ἑρμογενεὺς λόγων μὴ ἐκνήσκει παραγινώσκων. προσκίπτο δὲ τοῖς ἐκ τῆς γῆρας μάστιγι δογμασι. Id. ib. "Philosophiæ studens, literarumque Græcarum peritissimus." Sex. Aur. Viét. ep. 16. "Philosophiæ deditus Stoicæ; ipse etiam non solum vitæ moribus, sed etiam eruditione philosophus." Eutr. 8. 6; "Dabat se Marcus totum philosophiæ, amorem civium affectans." Jul. Cap. in M. Aur. 8.

brother, who now became sole monarch for the remainder of his life¹³.

The political conduct of this worthy prince was quite of a piece with that respectable title by which he was distinguished. His virtues were of that refined nature, that it was much easier to admire, than to praise, him¹⁴. It was his greatest pride to verify the saying of Plato, that "States would be happy, when princes were "philosophers¹⁵." The integrity of his heart, the excellence of his understanding, and his active zeal for the public good, made him appear like a guardian angel, armed with power from heaven, to repel those evils which threatened the utter ruin of the empire¹⁶.

Though strongly addicted to a contemplative course of life, his philosophy was not of that severe, fantastic, and visionary kind, as to detach him from society, to render him unfit for the world, or to incapacitate him for the discharge of his duties¹⁷; on the contrary, he made it the chief glory of his reign, to promote and encourage the useful arts¹⁸; and, above all, to acquire a perfect knowledge

¹³ "Qui Verus inter Altinum atque Con-
" cordiam iter faciens, ictu sanguinis, quem
" morbum Græci *αποπληξίς* vocant, unde-
" cimo imperii anno extinctus est. — Post
" cujus obitum Marcus Antoninus rempub-
" licam solus tenuit." Sex. Aur. Viſt.
" epit. 16. "Una quoque posteaquam iter
" ingressi sunt, sedens cum fratre in vehiculo
" Lucius, apoplexia correptus periit." Jul.
Cap. in M. Aur. 14.

¹⁴ "Vir, quem mirari facilius, quis,
" quam laudare possit." Eutr. 8. 6.

¹⁵ "Sententia Platonis semper in ore fuit,
" *Florere civitates, si philosophi imperarent,*
" *aut imperatores philosopharentur.*" Jul.
Cap. in M. Aur. 27.

¹⁶ "Iste virtutum omnium, cælestisque in-
" genii exstitit, ærumnisque publicis quasi
" defensor objectus est. Etenim nisi ad

" illa tempora natus esset, profecto quasi uno
" lapsu ruiſſent omnia status Romani. —
" Credo divinitus attributum, ut dum mundi
" lex, seu natura aliudve quid hominibus
" incognitum ea mala gignit, reſtorum
" consiliis tanquam medicinæ remediis le-
" niatur." Sex. Aur. Viſt. 16.

¹⁷ "Sed ab omnibus his intentionibus
" studium eum philosophiæ abduxit; seri-
" umque et gravem reddidit: non tamen
" prorsus abolita in eo comitate; quam
" præcipue suis mox amicis atque etiam
" minus notis exhibebat: cum frugi esset
" sine contumacia, verecundus sine ignavia,
" sine tristitia gravis. Jul. Cap. in M. Aur. 4.

¹⁸ "Tantum illo imperante florere
" *artes bonæ*, ut illam gloriam etiam tem-
" porum putem." Sex. Aur. Viſt. de Cæſ.
16.

of the laws of his country ²¹⁹, several of the ambiguities and difficulties of which he cleared up and removed; and improved the general system by many important alterations ²²⁰; though, upon the whole, he rather restored the old laws, than enacted new ²²¹. C H A P.
V.

To add weight to the authority of the senate, to which none of his predecessors ever paid so great a deference as himself, he gave them cognisance of a variety of causes, wherein persons of consular and prætorian rank were interested; and more particularly in those which concerned his own imperial office ²²²; he likewise made them judges in all appeals from the consuls ²²³. He introduced many of his friends into the senate, distinguishing them with ædilitian and prætorian dignities; and conferred similar honors upon other necessitous senators, who were not reduced to poverty by their own criminal conduct: but would suffer none to be chosen into that order, without a personal acquaintance with his character ²²⁴. He paid this further compliment to the senators, that, when any one of them was to be tried for a capital offence, the inquiry should be first made in secret, and then be laid before the public: neither would he suffer the knights to be present at such trials ²²⁵. But in this he seems to have shewn more partiality than judgment. While resi-

²¹⁹ "Studuit et juri; audiens Lucium Volusium Mæcianum." Jul. Cap. in M. Aur. 3.

²²⁰ "Legum ambigua mire distincta, vadem dimoniorumque solemni remoti denuntiandæ litis, operiendæque ad diem commode jus introductum." Sex. Aur. Vict. de Cæs. 16.

²²¹ "Jus autem magis vetus restituit quam novum fecit." Jul. Cap. in M. Aur. 11.

²²² "Senatum multis cognitionibus, et maxime ad se pertinentibus, judicem dedit.—Neque quisquam principum amplius senatui detulit. In senatus autem honorificentiam, multis et prætoribus et consularibus privatis decidenda negotia delega-

vit: quo magis eorum cum exercitio juris auctoritas cresceret." Id. 10.

²²³ "Senatum appellationibus a consule factis, judicem dedit." Id. ib.

²²⁴ "Multos ex amicis in senatum allegit, cum ædilitiis aut prætoribus dignitatibus. Multis senatoribus pauperibus sine crimine, dignitates tribunitias ædilitiasque concessit. Nec quenkum in ordinem legit, nisi quem ipse bene scisset." Id. ib.

²²⁵ "Hoc quoque senatoribus detulit, ut, quoties de eorum capite esset judicandum, secreto pertractaret, atque ita in publicum prodiret: nec pateretur equites Romanos talibus interesse causis." Id. ib.

dent in Rome, he frequented the senate in person, even though he had nothing in particular to propose to them; but if he had, he would leave his retirement in the country on purpose ²²⁶. He likewise attended their "comitia" quite to the evening, and never left the assembly, till the consul had dismissed it in the usual form ²²⁷.

When disengaged from the business of war, he occupied himself in the administration of justice, allowing ample time for the pleadings of the advocates; and so carefully investigating the truth, that he often devoted eleven or twelve days to the hearing of a single cause ²²⁸: and that he might not fall into errors by following his own judgment alone, he called to his assistance several of the principal magistrates, by whose authority and advice he delivered his sentences ²²⁹; and for the greater dispatch of business increased the number of juridical days to two hundred and thirty in the whole year ²³⁰. He applied his mind, with indefatigable attention, to every branch of his duty, thinking that a prince ought to transact nothing hastily; and that if he were negligent in trifles, he should not easily escape censure in matters of greater consequence ²³¹.

²²⁶ "Semper autem, cum potuit, interfuit senatui, etiamsi nihil esset referendum, si Romæ fuit: si vero aliquid referre voluit, etiam de Campania ipse venit." Jul. Cap. in M. Aur. 10.

²²⁷ "Comitiis præterea etiam usque ad noctem frequenter interfuit: neque unquam recessit de curia, nisi consul dixisset, Nihil vos moramur, patres conscripti." Id. ib.

²²⁸ Ο δ' αυτοκρατωρ, ὅσας ἀπο τοῦ πολέμου σχολὴν ἔχον, ἰδικάζει, καὶ ὕδωρ πλείονι τοῖς ῥητορσὶ μετρησθαι ἐκέλευε. τὰς τε πύστις καὶ τὰς ἀνακρίσεις ἐπὶ μακροτέροις ποιοῖτο, ὥς τε πανταχοῦν τὸ δίκαιον ἀκριβοῦν. καὶ κατὰ τοῦτο ἰδὲ πολλὰς καὶ δαδαικάς ἡμέρας τῇ αὐτῇ δίκῃ, καὶ πρὸς ἑκτόν τις ὅτι, ἀδικάζων ἐκρίνε. Dio Cass. 71. 6.

²²⁹ "Habuit secum præfectos, quorum ex autoritate et periculo semper jura distavit." Jul. Cap. in M. Aur. 10.

²³⁰ "Judiciariæ rei singularem diligentiam adhibuit: fastis dies judiciarios addidit, ita, ut ducentos triginta dies annuos rebus agendis litibusque disceptandis constitueret." Id. ib.

²³¹ Φιλοπονος γὰρ ἦν, καὶ ἀκριβῶς πᾶσι ταῖς τῇ ἀρχῇ προσήκουσι προσέφερετο· καὶ οὐδὲν ἐν παρρησίᾳ οὐτε ἐλογίζετο οὐτε ἐγράφει οὐτε ἐπαύει, ἀλλ' ἴσεν ὅτι καὶ περὶ τοῦ βραχυτάτου ἡμέρας ὅλας ἀνελίσκει, οὐκ ἀξίως τοῦ αυτοκράτορος ἐξ ἐπιδρωμῆς τι πράττειν. καὶ γὰρ νομίζειν ὅτι ἂν ἐλαχίστοι τι παμίδῃ διαβόλων αὐτῷ τοῦτο καὶ ἴσεν τὰ ἅλλα πάντα οὕτως. Dio Cass. 71. 6.

He treated all the people as if they were members of a free state²³²; and admitted all promiscuously to the freedom of the city²³³. Well apprised how much an universal purity of manners conduced to the public welfare, he was zealous in his endeavours to draw his subjects from their evil courses; not terrifying them by severity, but inviting them with rewards, and thus alluring them from the lowest stages of vice, to the highest of virtue²³⁴. Exempt from any wilful failings himself, he patiently bore the failings of others; neither prying into, nor punishing, them with too much strictness. Whatever he discovered valuable, even in an irregular character, he applauded and encouraged; and frequently employed the person in those matters to which his qualities were suited, without regarding his defects in others: for he often used to observe that, as it was impossible to bring mankind to that standard of goodness he could wish, it was necessary to take advantage of such perfections as were to be found, and apply them to the use of the commonwealth²³⁵.

When obliged to inflict punishments, they were usually inferior to what the laws enjoined; though against such as were guilty of heinous crimes he was inexorable. Persons of higher rank, who were arraigned of capital offences, he tried himself with the utmost equity and impartiality; and once rebuked a prætor for hurrying over the causes of criminals, commanding him to hear them over again; and saying, it concerned their dignity, to be judged be-

²³² "Cum populo autem non aliter egit, quam est actum sub civitate libera." Jul. Cap. in M. Aur. 12. "Hic cum omnibus Romæ æquo jure egit." Eutrop. 8. 6.

²³³ "Data cunctis promiscue civitas Romana." Sex. Aur. Viç. de Cæs. 16.

²³⁴ "Fuit per omnia moderatissimus in hominibus deterrendis a malo, invitandis ad bona, remunerandis copia, indulgentia liberandis: fecitque ex malis bonos, ex

"bonis optimos." Jul. Cap. in M. Aur. 12.

²³⁵ Αυτος μιν ἀπαύειν τῶν ἀμαρτημάτων ἀπειχίσει, καὶ οὐκ ἴκων οὐκ ἀπαν ἐπλημελεῖ· τὰ δὲ δὴ τὰς ἀλλοτρίων ἀμαρτήματα, καὶ οὐτὶ ἐπολοπραγματοῖ, οὐτὶ ἐκδολεῖ. καὶ εἰ μὴ τις χρηστὸς τι ἐκράτῃ, ἐπὶ καὶ ἐχρητο εἰς κερὸν αὐτοῦ, τῶν δὲ ἱερῶν οὐ προσέποιετο· λέγων, "ὅτι ποιεῖται μὴ τῶν κερδοσκοπῶν, ἀλλ' ὅποιους βούλεται εἶχειν, ἀδυνατεῖν ἐστὶ· τοῖς δὲ οὐσι προσήκει, εἰς ὃ, τὸ αὐτὸς αὐτῶν τῶν κερδῶν χρησιμῶς, ὡς χρῆσθαι." Dio Cass. 71. 34.

BOOK
III.

fore him, who was the common magistrate over the whole people²³⁶. The same mercy which he shewed to his subjects, he extended to his captive enemies, receiving them under his protection, and giving them settlements within the Roman territories²³⁷. To the princes of the bordering countries he conducted himself with equity and moderation, making peace with them upon liberal terms; whereby he secured the affections of the provinces of the East²³⁸.

Thus, without caprice, affectation, or hypocrisy, he persevered in a sincere and uniform exercise of the functions of his imperial office; but not having a constitution adequate to the fatigues of government²³⁹, he arrived only at the verge of old age, when he calmly yielded to the common lot of mortality²⁴⁰; leaving the world to bewail in him the loss either of a father, a brother, or a son²⁴¹; and to feel, by fatal experience, that such excellencies were not hereditary.

²³⁶ "Erat mos iste Antonino, ut omnia
"crimina minore supplicio, quam legibus
"plecti solent, puniret: quamvis nonnun-
"quam contra manifestos et gravium cri-
"minum reos inexorabilis permaneret.
"Capitales causas hominum honestorum ipse
"cognovit, et quidem summa æquitate, ita,
"ut prætorem reprehenderet, qui cito reorum
"causas audierat, juberetque illum iterum
"cognoscere; "Dignitatis eorum interesse di-
"cens, ut ab eo audirentur, qui pro populo
"judicaret." Jul. Cap. in M. Aur. 24.

²³⁷ "Æquitatem etiam circa captos
"hostes custodivit, infinitos ex gentibus in
"Romano solo collocavit." Id. ib.

²³⁸ "Multa egit cum regibus, et pacem
"confirmavit, sibi occurrentibus cunctis regi-
"bus et legatis Persarum. Omnibus orien-
"talibus provinciis carissimus fuit." Id. ib.
26. "Provincias ingenti benignitate et

"moderatione tractavit." Eutr. 8. 6.

²³⁹ Αριστα δὲ ἀπαύειν τὸν αὐτὸν καὶ τῶν γυναικῶν
ἡρξαι· πολλὰ γὰρ καὶ πολλὰ τῶν σωματικῶν ἀνδρῶν
ἰδιωτῶν, καὶ τοῦτο ἐξ ἀσθενείας καὶ ἐκ τῆς
ἀπαιδείας. Dio Cass. 71. 34.

²⁴⁰ Ὅτι οὐ προσκοιτῶν, ἀλλ' ἐξ ἀγῆνης παύσει
ἐπράττει, προδίδω· ἐπὶ γὰρ καὶ πεινηκόντα καὶ μῆρας
δικαί, ἡμῶν τι μῆρας καὶ δύο ζῆσας, καὶ τοιούτοις τῶν
τῶν πρὸν Ἀλβανίαν συχρὸν χρόνον ὑπαρξάντων, καὶ αὐτοὺς
ὡς καὶ δικαί ἐστιν, καὶ ἰνδικαί ἡμῶν αὐτοκράτορας,
ὁμοίως διακρίνει γινώσκων καὶ οὐδὲν ἡλλοιωθῆναι. οὕτως
ὡς ἀληθῶς ἀγαθὸς ἀνὴρ, καὶ οὐδὲν προσκοιτῶν
ἔχει. Id. ib.

²⁴¹ "Cum igitur in amore omnium im-
"perasset, atque ab aliis modo *frater*, modo
"pater, modo *filius*, ut cujusque ætas fine-
"bat, et dicebatur, et amaretur; octavode-
"cimo anno imperii sui, sexagesimo et primo
"vitæ, diem ultimum clausit." Jul. Cap.
in M. Aur. 18.

It

It is no wonder, that a prince possessed of such active and popular virtues should have been deified by his affectionate subjects²⁴²; that being a compliment which too often fell to the share of the most undeserving of his predecessors: but to shew that even superstition is not always insensible to real merit, nor incapable of making just distinctions between characters, his memory was preserved with every honorable mark of distinction, which both gratitude and extravagance could invent²⁴³; a statue was erected to him in the court of justice of pure gold²⁴⁴; and it was deemed almost sacrilege, in every one whose fortune could afford it, not to place his image among the tutelary deities of the family; a fashion which continued for several subsequent ages²⁴⁵.

A succession of princes, so truly wise, virtuous, and benevolent, as those from Nerva to Aurelius, is hardly to be paralleled in the history of any age or country, since the establishment of civil society. By being themselves the purest examples of submission to the laws of their country, and by holding in just contempt the gaudy pageantry of majesty, they erected a more durable sovereignty in the hearts of their subjects, than the terror of exterior force could have imposed upon their persons. The imperial power, by such a careful and moderate use of it, was rendered so truly amiable in the eyes

²⁴² "Certis omnibus, quod a Diis commodatus, ad Deos redisset." Jul. Cap. in M. Aur. 18.

²⁴³ "Priusquam funus conderetur, ut plerique dicunt (quod nunquam antea factum fuerat, neque postea), senatus populusque, non divisim locis, sed in una sede, *propitium deum* dixit." Id. ib. "Cum igitur fortunatam rempublicam et virtute et mansuetudine reddidisset, obiit decimo octavo imperii anno, vitæ sexagesimo primo: et omnibus certatim adtentibus, inter divos relatus est." Eutr. 8. 7.

²⁴⁴ Τελευτησας δι, αλλα τι πολλα εις τιμην ελαβι, και χρυσου εις αυλο το συνεδριον εση. Dio Cass. 71. 34.

²⁴⁵ "Et parum sane fuit, quod illi honoris divinos omnis ætas, omnis sexus, omnis conditio ac dignitas dedit; nisi, quod etiam sacrilegus judicatus est, qui ejus imaginem in sua domo non habuit, qui per fortunam vel posuit habere, vel debuit. Denique hodieque in multis domibus Marci Antonini statuae consistunt inter deos penates." Jul. Cap. in M. Aur. 18. that is, to the time of Dioclesian.

of the whole people, that it had now gained a complete ascendancy over every other part of the antient constitution: and could the force of nature have gone far enough to have supported a like succession in future times, the Roman empire might still have been the delight and envy of the admiring world.

But this magnificent edifice, now brought to the height of its beauty and perfection, from henceforward began to decay²⁴⁶. What Pliny applied to Trajan, is equally applicable to all his other successors down to this time; that they had laid a burden not only upon all following princes, but likewise upon the people in general; for that these would expect of succeeding emperors that they should endeavour to merit the same exalted characters; and they, not receiving the same tribute which had been so plentifully conferred upon their predecessors, would give loose to their resentment and indignation²⁴⁷: and the general consequences of these mutual disappointments would be, on one side, discontent and murmuring, and on the other, severity and oppression; all which predictions were too speedily and fatally verified.

The confusions that now ensued in the empire, from the frequent removal of one tyrant, and the setting up of another, very sensibly affected the purity of its civil policy, and corrupted the sources both of its legislative and executive powers.

Commodus,
A. D. 180.

Aurelius had anticipated the succession of his son Commodus, by causing him to be proclaimed Cæsar²⁴⁸, while yet a youth; hoping, most likely, that by the help of a good education, assisted by his

²⁴⁶ Απο χρεως τε βασιλειας εις σκληρας και καλαι-
τημινας, των τε πραγμων τοις τοτε Ρωμαιοις, και
ημιν εν καλαπισιουσης της ισοριας. Dio Cass. 71.

36.

²⁴⁷ "Onerasti futuros principes, sed et
posteror nostros; nam et hi a principibus
suis exigent, ut eadem audire mereantur:

"et illi, quod non audiant, indignabuntur." Plin. Pan. 73.

²⁴⁸ "Cum filio Commodus, quem Cæsarem
suffecerat." Sex. Aur. Vict. de Cæs. 16.
"Romæ rursus cum Commodus Antonino
filio suo, quem jam Cæsarem fecerat, tri-
umphavit." Eutr. 8. 6.

own excellent instructions²⁴⁹, he would be fully qualified to execute that arduous trust, which, in due time, was to be committed to his charge; but either his untoward and vicious disposition, or the negligence of his courtly preceptors, totally frustrated these pious intentions²⁵⁰. It is certain that Aurelius was no stranger to the profligacy of his manners; as he freely signified his sentiments of him to his friends, who were assembled round his death-bed²⁵¹; and when asked, to whose care he recommended his son, he answered; *To you, if he should be worthy, and to the immortal gods*²⁵². Though it is reported he often wished him dead, rather than see him become like Caligula, Nero, or Domitian²⁵³.

As there can be no doubt that Aurelius had the perpetual welfare of the Roman empire most sincerely at heart, it is no small matter of surprize, that he should have transmitted his power to a professed debauchee, who, he must be sure, would employ it to the worst purposes of oppression. The whole that can be said, and that not to excuse, but only to account for it, is, that the firmness of the philosopher yielded too easily to the weakness of the parent: and the senate and people, either out of gratitude to his memory, or from having now acquired a habit of implicit reverence for the will of

²⁴⁹ "Commodum Marcus et suis præceptis et etiam magnorum atque optimorum virorum erudire conatus est." *Æl. Lamp. in Com. 1.*

²⁵⁰ "Sed tot disciplinarum magistrj nihil ei profuerunt. *Tantum autem valet aut ingenii vis, aut eorum qui in aula institutores habentur.* Nam a prima statim pueritia, turpis, improbus, crudelis, libidinofus, ore quoque pollutus et constupratus fuit." *Æl. Lamp. in Com. 1.*

²⁵¹ "Ante biduum quam expiraret, admissis amicis, dicitur ostendisse sententiam de filio eandem, quam Philippus de Alex-

andro; cum de hoc male sentiret, addens; *minime se agre mortem ferre, filium superstitem relinquens.* Nam jam Commodus turpem se et cruentum ostentabat." *Jul. Cap. in M. Aur. 27.*

²⁵² "Et cum ab eo quæreretur, cui filium commendaret, ille respondit: *Vobis, si dignus fuerit, et Diis immortalibus.*" *Id. ib. 28.*

²⁵³ "Fertur filium mori voluisse, cum eum talem videret futurum, qualis exstitit post ejus mortem: ne, ut ipse dicebat, similis Neroni, Caligulæ et Domitiano esset." *Id. ib.*

their princes, gave themselves very little concern about the intrinsic merits of the son; but suffered him to take quiet possession of the throne, without any seeming apprehensions of the fatal difference they were soon to feel.

Commodus was, in the truest sense of that odious appellation, a perfect tyrant; and, in one circumstance especially, he exceeded even the worst of his predecessors, in that he performed not a single act of goodness, to palliate the horror of his cruelties; or to destroy the uniformity of his abandoned and infamous character²⁵⁴. His reign, which was of no very short duration²⁵⁵, has been justly compared to a pestilence²⁵⁶, spreading terror and devastation through every quarter of his dominions²⁵⁷. After various ineffective attempts upon his life²⁵⁸, he at last fell a victim to a secret conspiracy²⁵⁹, in the midst of the universal execrations of all mankind, who pronounced him, even when dead, an enemy both of men and gods. The senate, in the extravagance of their joy, erased his name from all public inscriptions²⁶⁰; and, to inflict a still deeper brand upon his memory, passed a most solemn judgment, describing, in the genuine, perturbed eloquence of passion, their poignant feelings of their former sufferings; which is still preserved by an ancient historian, as a lasting monument of the natural antipathy, which

²⁵⁴ "Savior omnibus libidine atque avaritia, crudelitate. Nulli fidus: magisque in eos atrox, quos amplissimis honoribus donisque ingentibus extulerat." Sex. Aur. Vict. epit. 17. "Nihil paternum habuit;—luxuria et obscenitate depravatus." Eutr. 8. 7.

²⁵⁵ "Cum annis duodecim post patrem, et octo mensibus imperasset." Id. ib.

²⁵⁶ Η δὲ ἀπάντων νοσημάτων καὶ ἀπάντων κακουγυμμάτων χαλεπωτέρος Ῥωμαίους ὁ Κομμοδος. Dio Cass. 72. 15.

²⁵⁷ Οὗτος μὲν ὁ φόβος πᾶσι ποινὸς καὶ ἡμῶν καὶ τοῖς ἄλλοις τῶν ἐπραξέμενων καὶ ἑτέροις τι τοιοῦτον πρὸς ἡμᾶς τοὺς βουλευτάς, ἐξ οὗ οὐχ ἥκιστα ἀπολαύσας

προσδοκῶσιν. Id. ib. 21.

²⁵⁸ Καὶ ἐπιβουλευθῆναι μὲν ὁ Κομμοδος πολλάκις ὑπὸ τινῶν, πολλὰ δὲ καὶ ἀπειρητῆ ἐπραξέμε. Id. ib. 4.

²⁵⁹ "Obiit morte subita, adeo ut strangulatus, vel veneno interfectus putaretur." Eutr. 8. 7.

²⁶⁰ "Tanta execratione omnium, ut hostis humani generis etiam mortuus judicaretur." Id. ib. "Quo cognito senatus,—simulque plebes hostem deorum atque hominum appellavere. Radendum—que nomen censere." Sex. Aur. Vict. de Cæs. 17. "Nomen ejus, alienis operibus incisum, senatus erasit." Æl. Lamp. in Com. 17.

even the most abject slaves bear to tyranny, when removed, but for a moment, beyond the reach of its vengeance ²⁶¹.

C H A P.
V.

The senate seized this opportunity to assert and recover their former right of nomination to the vacant throne; and instantly proclaimed A. Helvius Pertinax ²⁶²; which honor he accepted with so much reluctance, that he is supposed from thence to have acquired his name ²⁶³; though this must be a mistake, as Dio, whose authority is much more to be relied on, speaks of him by the same, many years earlier.

Pertinax,
A. D. 193-

This prince, from a very obscure origin, had recommended himself to the notice of former Emperors, who knew the value of merit; and having borne some of the chief offices in the state, both military and civil, was now one of the most respectable personages of the times, as well for his age, as particularly for his simple, frugal, and primitive manners, in which he nearly resembled the most illustrious characters of ancient Rome ²⁶⁴. His reign, unfortunately, was

very

²⁶¹ "Acclamationes senatus post mortem Commodi graves fuerunt. Ut autem sciretur, quod iudicium senatus de Commodum fuerit, ipsas acclamationes de Mario Maximo indidi (it is the historian that speaks), et sententiam senatusconsulti." *Æl. Lamp. in Com. 18.* To which the reader is referred, it being too long to be here inserted.

²⁶² "Confestim præfecto urbi, Aulo Helvio Pertinaci imperium defertur." *Sex. Aur. Vict. de Cæf. 17.* "Ex senatusconsulto imperare iussus." *Eutr. 8. 8.*

²⁶³ "Iste coactus imperavit, repugnansque imperium suscipiens, tale cognomentum fortitus est." *Sex. Aur. Vict. ep. 18.* The Greek historian, who was himself a senator, and present at the time, gives the following account of his behaviour on that occasion: Εξελθὼν δὲ ἐκ τοῦ τειχεύς, πρὸς τὸ συνέδριον, ἑκτότος ἐπὶ οὐσῆς ἀφικεῖται καὶ ἀσπασαμένος ἡμᾶς ὅπως τις (ὡς ἐν ὁμίλῳ καὶ ἐν ᾠδῳ τούτου)

προσέλθων αὐτῷ ἡδυνάδῃ, ἵππιστα ἐκ τοῦ αὐτοσχιδίου ἵππων ὅτι "Ὀνομασμαι μὲν ὑπὸ τῶν στρατιωτῶν αὐτοκράτωρ, οὐδὲν μὲντοι τῆς ἀρχῆς δομαί, ἀλλ' ἐξισταί, ἡδὲ καὶ τήμερον αὐτῆς, διὰ τε τῆν ἡμευτοῦ ηλικίαν καὶ ἀξίωσιν, καὶ διὰ τῆν τῶν πραγμάτων δύσχειαν." λιχθύνων δὲ, καὶ ἐπηρουναι αὐτῶν ἀπο γυμνης, καὶ ὡς ἀληθῶς ἡρώμδα. *Dio Cass. 73. 1.*

²⁶⁴ *Ηὲ δὲ ὁ Περτιναξ Λιγυρὸς ἐξ Ἀλβῆς Πομπηίας, παῖρος οὐκ ευγενούς, γραμματῶν, ὅσοι ἀποζῆν ἐξ αὐτῶν, ποικηλῆς. Dio Cass. 73. 3.* "Origine gentis sordida, præfecturam urbi agens Imperator effectus." *Sex. Aur. Vict. ep. 18.* "Pertinax grandævus jam, ut septuagenariam attigisset ætatem, præfecturam urbi tum agens." *Eutr. 8. 8.* "Bello Parthico industria sua promeritus, in Britanniam translatus est, ac retentus.—Postea—vexillis regendis adscitus est. In quo munere approbatus, lectus est in senatum.—Ex quo eminente industria, studio Marci imperatoris consul est designatus.—Sæpissime Pertinax a Marco et in concione militari,

very short, not exceeding three months²⁶⁵; yet in that time he gave proofs of a sincere desire to restrain the exorbitance of the imperial power, by mitigating the severity of the laws in cases of high-treason²⁶⁶. He suppressed the scrutiny into the value of estates; and severely punished informers, though still with more mildness than former Emperors; and ascertained the penalties which persons of each particular rank should incur, if found guilty of the crimes of which they were accused²⁶⁷. To restrain the claims of the prince over private property, he enacted a law, that former wills should not be void, till subsequent ones should be completed; and that the exchequer should take no advantage of such defects. And though the treasury was utterly exhausted²⁶⁸ by the extravagance of Commodus, he protested against the acceptance of inheritances, which, according to the shameful adulation of the times, were bequeathed to himself, or escheated to him, in consequence of any perplexed law-suit, to the prejudice of the true heirs; annexing the following reason to the act of senate, "That it was more just and reputable to come into possession of a poor government, than to arrive at wealth through the paths of oppression and infamy²⁶⁹."

Wishing

"militari, et in senatu laudatus est: doluit-
que palam Marcus, quod cum senator
esset, præfectus prætorii fieri a se non posset.
— Bene gestis his provinciis, Syriam me-
ruit." Jul. Cap. in Pert. 2. "Hic
doctrinæ omnis ac moribus antiquissimis:
immodice parcus, Curios æquaverat Fa-
briciosque." Sex. Aur. Vict. de Cæs. 18.
"Amabat simplicitatem: communem se affa-
tu, convivio, incesu præbebat. Id. ep. 18.
Περτυναξ δὲ ἡ μὲν τῶν καλῶν κ' ἀγαθῶν. Dio Cass. 73. 1. Τὴν τι γὰρ ψυχὴν ἀριστὸς ἦν. Id. ib. 1.

²⁶⁵ "Helvius Pertinax imperavit dies
"octaginta quinque." Sex. Aur. Vict. ep.
18. Ἡξίε δὲ πανὺ βραχὺν τινὰ χρόνον. Dio Cass.
73. 1.

²⁶⁶ "Quæstionem majestatis penitus tulit
"cum jurejurando. Revocavit etiam eos,

"qui deortati fuerant crimine majestatis;
"eorum memoria restituta, qui occisi fue-
rant." Jul. Cap. in Pert. 6.

²⁶⁷ "Census retractari jussit: delatores
"vinctos graviter puniri jussit; et tamen
"mollius quam priores imperatores: unicui-
"que dignitati, si delationis crimen incur-
"reret, pœnam statuens." Id. ib. 7.

²⁶⁸ Τόσῳ αὐτῷ δὲ ἀπὸ τότε τὸ βασιλεὺς εἶχεν
ἀχρεματία, ὥστε πέντε καὶ ἑκατοὶ μυριάδας δραχμῶν
μόνον εὐρεθῆναι. Dio Cass. 73. 5.

²⁶⁹ "Legem sane tulit, testamenta priora
"non prius essent irrita, quam alia perfecta
"essent; neve ob hoc fiscus aliquando succede-
"ret. Ipseque professus est, nullius se adi-
"turum hæreditatem, quæ aut adulatione ali-
"cujus delata esset, aut lite perplexa, ut legitimi
"heredes et necessarii privarentur: addidit-
"que

Wishing as much as possible to revive the spirit of the antient constitution, and to merit the love of his people, he accepted the titles of *Emperor* and *Prince of the Senate*, in the same sense in which they had been used by Augustus²⁷⁰. Under this authority he did every thing that could be expected from a good governor; rectifying many abuses which had arisen from the licentiousness of the preceding reign; and administering the affairs of the commonwealth, with the same prudence as his own domestic concerns. He displayed a signal humanity and goodness in removing the marks of infamy, which had been inflicted upon the memory of divers innocent sufferers under his bloody predecessor; and gave opportunity to the friends and relations of the deceased, to do proper honors to their decayed remains²⁷¹.

He affected nothing of the stately and unsocial pride of the monarch, but chose to appear like what he really was²⁷². He expressed the highest attachment to the senate, by attending its public meetings in person, making his motions in it according to the usual forms; and esteeming it his greatest glory to act in conjunction with it²⁷³. He wished likewise to resign the empire, and return to his

“que senatusconsulto hæc verba: *sanctius est, Patres Conscripti, inopem rempublicam obtinere, quam ad divitiarum cumulum per discrimina atque dedecoris vestigia pervenire.*” Jul. Cap. in Pert. 7.

²⁷⁰ Οὕτω μιν ἐς τὴν ἀρχὴν ὁ Περσινὰς καλεῖται καὶ λαβεῖν τὰς τι ἀλλὰς ἐπικληθεὶς τὰς προσήκουσας, καὶ ἵτις ἐν τῇ δημοτικῇ ἵπαι βουλεύσθαι. πρῶτος γὰρ τῇ γιουσιας κατὰ τὸ ἀρχαίον ἐπωνομασθῆ. Dio Cass. 73. 5.

²⁷¹ Εὐδὺς εἰς κόσμον, ὅτε πρὶν πλημμυλὸς εἴχετο καὶ ἀτακτὸς, καθίστατο. φιλαδελφία τι γὰρ καὶ χρηστότης, καὶ οἰκονομία βελτίστη, καὶ πρόνοια τοῦ κοινου ἐπιμαρτυρεῖται, περὶ τοῦ ἀντὶστατορα διδωκυμένο. τὰ τι γὰρ ἀλλὰ, ὅσα αὖ ἀγαθὸς ἀντοκράτωρ, ἐπράττει ὁ Περσινὰς, καὶ τὴν ἀτιμίαν ἀφίλει τῶν ἀδικῶς πεφονευμένων καὶ προσέτι καὶ ἐπαινοῖσι, μηδὲν οἷον

τοιαύτην δίκην προσδιέσθαι καὶ αὐτὰ οἱ μιν, τοὺς συγγενεῖς, οἱ δὲ τοὺς φίλους ἀγκαλοῦν μὴ δακρυῶν ὄμου καὶ χάρας οὐδὲ γὰρ οὐδὲ τοῦτο πρὶν εἶπεν ποιεῖν καὶ μετὰ ταῦτα ἀπορῦντο τὰ σώματα, οἱ μὲν ὁλοκληρὰ, οἱ δὲ μέρη, ὥς ποῦ ἴκασον αὐτῶν ἡ τοῦ οὐλοῦ τοῦ χρόνου εἴχετο, εὐθιτοῦ, καὶ ἐς τὰ προγονικὰ μνημῖνα ἀπὸ τῆς οἰκίας. Id. id. 73. 5.

²⁷² “Imperium et omnia imperialia sic horruit, ut sibi semper ostenderet displicere. Denique non alium se quam fuerat videri volebat.” Jul. Cap. in Pert. 13.

²⁷³ Senatui legitimo semper interfuit, ac semper aliquid retulit.” Id. ib. 9. “Fuit in curia honorificentissimus; ita ut senatum faventem adoraret, et quasi præfectus urbi cum omnibus sermonem participaret.” Id. ib. 13.

private

private station : neither would he permit his children to be educated within the walls of the palace ²⁷⁴; having certainly no views to their succession to the throne. In the ordinary forms of behaviour he was courteous and accessible to persons of all ranks, especially to the senators, whom he received at his table, and entertained with a plain and frugal plenty : and though his simple style of life was a subject of ridicule to the opulent and ostentatious, yet they who knew how to prefer virtue to luxury were lavish in his praises ²⁷⁵.

A sovereign so truly disinterested and patriotic was well qualified to revive the splendor of old Rome, or to bring back the merciful and philosophical reign of Aurelius. And it is a matter of real wonder, how such a variety of useful and popular acts could have been performed in so contracted a space of a few months, which are not often to be expected from many others in the same high station, in a greater number of years. But let this bright example, which blazed out but for a moment, and then expired for ever, serve as an instructive lesson to the princes of this world, to shew them of what inestimable value the smallest particle of time is in their hands ; and how easily it may be employed in promoting the general happiness of their people ; when a wise head is under the guidance of a virtuous heart.

But such qualities were of too pure, rigid and inflexible a nature, to suit with the temper of a profligate and restless soldiery, who were never satisfied but with a free indulgence in vice and rapine ; and were, therefore, easily drawn into a conspiracy against his

²⁷⁴ " Voluit etiam imperium deponere, atque ad privatam vitam redire. Filios suos in palatio nutrirī noluit." Id. ib.

²⁷⁵ Εχόντο δὲ καὶ ἡμεῖς (sc. senatoribus) δεινὰ καὶ γὰρ εὐπρόσκλητος ἦν ἡκούε τι ἰστορικῶς ὅ, τι τις ἀξίωσιν, καὶ ἀπεκρίντο ἀνδρωπικῶς ὅσα αὐτῷ δοκῶν ἰσχυρὰ τι ἡμᾶς σὺνφρονῶς καὶ ὁπότῃ μὴ

τοῦτο ποιεῖν, διαπεμπὴν ἀλλοῖς ἀλλὰ καὶ ταῖς ἑαυτῶν καὶ αἰσῶν ἐπὶ τούτῳ οἱ μὲν πλούσιοι καὶ μεγαλοχῶροι, διεγίγαντο οἱ δὲ ἄλλοι, εἰς ἀρετὴν ἀσέλγους προσημύοντες, ἐπηρεάζοντες. Dio Cass. 3. 3. This is the testimony of an historian, who seems himself to have often partaken of his bounty.

life,

life, which too surely succeeded at the instigation of a competitor, who had no other merit to intitle him to the imperial dignity, beside money to purchase it²⁷⁶. But the people in general, who had felt the happy effects of the gentle government of Pertinax, though they could neither stop the sacrilegious hand of treason, nor avenge his death, did proper justice to his character, and with incessant acclamations pronounced him a god; proclaiming, with raptures, the tranquillity they had enjoyed under his administration, and calling him their *affectionate father, the father of the senate, the father of all good men*²⁷⁷. On the accession of Severus, the senate, desirous of shewing all possible respect to his memory, performed his public obsequies; on which occasion the Emperor himself spoke his funeral oration, and assumed his name as the significant emblem of a good prince²⁷⁸; though he afterwards laid it aside, at the desire of some of his friends²⁷⁹, who were conscious, most probably, that he had no just pretensions to so meritorious a title.

The unhappy event of the death of Pertinax being publicly known, Didius Julian, the principal author of the tumult, petitioned the army to appoint him the successor; whereby a new, and unheard-of disgrace was inflicted upon this potent empire, which, with the ca-

Didius Julian,
A. D. 193.

²⁷⁶ "Eum milites, queis inhausto jam, perditoque orbe satis videtur nihil, impulfore Didio, fæde jugulavere octogesimo imperii die." Sex. Aur. Vict. de Cæs. 18.
²⁷⁷ "Scelere Juliani multis vulneribus obtruncatur." Id. ep. 18. Octogesimo imperii die prætorianorum militum seditione, et Juliani scelere occisus." Eutr. 8. 8.

²⁷⁸ "Huic mortuo Divi nomen decretum est: ob cujus laudem ingeminatis ad vocis usque defectum, plausibus, acclamatum est, Pertinace imperatore securi viximus: neminem timuimus. Patri pio, patri senatus, patri omnium bonorum." Sex. Aur. Vict. ep. 18. "Per senatum et populum Pertinax inter deos relatus est." Jul. Cap.

in Pert. 14.

²⁷⁹ "Sub Severo autem imperatore, cum senatus ingens testimonium habuisset Pertinax, funus imaginarium ei et censorium ductum est, et ab ipso Severo funebri laudatione ornatus est. Ipse autem Severus, amore boni principis, a senatu Pertinacis nomen accepit." Id. ib. 15. Τοῦ Ιουλιανοῦ θανάτου καὶ ψήφισμα ἔσθ' αὐτοῦ καὶ τοῦ Σεβήρου αὐτοκρατορεῖν ὀνομασθῆναι, τῷ τε Περσινάκῃ ἡρωικὰς τιμὰς ἀποδοῦναι. Dio Cass. 73. 17.

²⁸⁰ "Se quoque Pertinacem vocari jussit: quamvis postea id nomen aboleri voluerit, querimonia amicorum." Æl. Spart. in S. Sev. 7.

B O O K
III.

pital itself, was put up to sale by a band of lawless ruffians, to be disposed of for the sole benefit of the assassins of their late excellent master. The whole was carried on with the true spirit and animosity of a modern auction; and thus was Rome, with all her numerous appendages, transferred to Julian, the best bidder; and the principal author of that sedition, which opened his way to these unmerited honors ²⁸⁰.

Thus supported by the whole power of the army, he shewed himself before the senate, which, through fear, was met to receive him; where, in a very singular oration, boasting of virtues he never possessed, and of moderation he never exercised, he demanded a confirmation of his appointment, with which this mean and dastardly assembly immediately complied ²⁸¹, and acknowledged him Emperor by an unanimous vote, decreeing to him, at the same time, the other customary honors and privileges ²⁸². From hence he immediately proceeded to the palace, where he spent the night in gluttony and riot; insulting over the mangled corpse of his venerable predecessor ²⁸³.

²⁸⁰ Οὗτος (sc. Julianus) ακουσας τον θανατον του Περinnaκου, σπουδη εις το γραλιοπιδον παρεργισει, και προς ταις πυλαις του τειχους εξως, παρεκαλει τους γραλιοπιδας υπερ της των Ρωμαιων ηγουμενειας. οτι δε και πραγμα αισχιζοι τε και αναξιον της Ρωμης εγενετο. ωσπερ γαρ ει αγορα και ει πωλητηριω τι, και αυτη και η αρχη αυτης, πασα απεκηρυχθη. Dio Cass. 73. 11. The whole of this singular transaction is painted in very lively colors by the noble historian, who was himself in Rome at the same time, and appears to have been an active member of the senate.

²⁸¹ Και ο μιν ουτω προς εσπεραν εις τι την αγοραν και προς το βουλευτηριον ηπειχθη, παμπληθεις δευφορους μελα σημειωι συχρως ωσπερ εις πραξινητινα αγων, ινα και ημεις και τοι δημον προσκαταπλήξας προσθῃται.—ημεις δε πυνθανομενοι ταυτα, ως ποι εκαστω διγγελλιτο, εφιδευσμεθα μιν τοι Ιουλιανον και τους γραλιοπιδας,—και μαλιστα όσοι τι οι προς τον Περinnaκα επιτηδευι και γαρ εγω εις εξ αυτων ην (says the historian)—ομως δ' ου και δια ταυτα (ου γαρ

ιδοκει ημιν ασφαλως ειναι, οικoi, μη και εξ αυτου τουτου υποτινιδωμεν, καιλαμνεται) προηλθωμεν, ουχ οτι διδουλωμεν, αλλα και διδιπτηκοτες και ωσαμνοι δια των στρατιωτων, εις το βουλευτηριον εισηλθωμεν, και ηκουσαμεν αυτου τα τι αλλα αξιως εαυτε λεγομεν, και οτι, &c. Dio Cass. 73. 12.

²⁸² “Inde habita concione militari, vestra in senatum venit, totumque se senatui permisit, factoque senatusconsulto, imperator est appellatus, et tribunitiam potestatem, jus proconsulare, in patricias familias relatus, emeruit.” Æl. Spart. in D. Jul. 3.

²⁸³ Και ο μιν, υψω την αυλαρχιας και εκ των της βουλης δογματων βιβαιοσάμενος, ανελθεν εις το παλατιον. και ευρων το δεπνον το τη Περinnaκι παρεσκευασμενον, πολλα τι αυτου κατεγχευε, και καλαπιμψάμενος, ιδεν τι και οπωσουν ευριθνηται τοι ηδυνηθη πολυτιμητον, διαπικμπλαλο, ενδοι ετι του περικοπιμενου, και εκυβειν. Dio Cass. 73. 13.

Julian

Julian was of an antient and respectable family, particularly famous for an hereditary knowledge of the law, in which he had himself acquired some reputation ²⁸⁴: but, with all these endowments, he was of a factious and turbulent disposition, fond of power, eager after change; of dissolute manners; defiling his advanced age with debaucheries, which he had prudently avoided in his youth; and not more insatiable in scraping up wealth, than profuse in spending it ²⁸⁵. He is charged likewise with being addicted to pride; though, after his elevation to the empire, he behaved with more humility; being affable at his entertainments, generous in his contributions, and moderate in his notions of liberty ²⁸⁶. But these faint traces of virtues are set in their true light by a cotemporary historian, who had a personal and perfect knowledge of his character; and who properly ascribes them to the necessity he thought himself under of keeping upon good terms with the senate, and others in power, by civility and flattery, which he carried to so gross an extreme ²⁸⁷, that no one could place the least confidence in his sincerity ²⁸⁸.

²⁸⁴ “Didio Juliano, qui post Pertinacem imperio adeptus est, proavus fuit Salvius Julianus, bis consul, præfectus urbi, et jurisconsultus: quod magis eum nobilem fecit.” *Æl. Spart. in D. Jul. 1.* “Post eum Salvius Julianus rempublicam invasit; vir nobilis, et juris peritissimus; nepos Salvi Juliani, qui sub divo Hadriano *perpetuum composuit edictum*.” *Eutrop. 8. 9.* “Genus ei pernobile, jurisque urbani præstans scientia.” *Sex. Aur. Vict. de Cæs. 19.* ²⁸⁵ “Vir nobilis, juris peritissimus, factiosus, præceps, regni avidus.” *Id. ep. 19.* “Objecta sane sunt Juliano hæc, quod gulosus fuisset, quod aleator, quod armis gladiatoris exercitus esset, eaque omnia senex fecerit, cum antea nunquam adolescens effect vitiis infamatus.” *Æl. Spart. in D. Jul. 9.* *Ιουλιανὸς ὁ Διδίου, τὸ μὲν γένος βουλευτικοί, τοὶ δὲ τρόποι δεινοὶ ἔχον, χρηματιστὴς τε ἀπληγὸς καὶ ἀναλόγῃ ἀσέλγης, πατέρων τε αἰεὶ πραγμάτων ἐπιθυμῶν.* *Dio Cass. 73. 11.*

²⁸⁶ “Objecta est etiam superbia; cum ille etiam in imperio fuisset humillimus. Fuit autem contra humanissimus ad convivia, benignissimus ad subscriptiones, moderatissimus ad libertatem.” *Æl. Spart. in D. Jul. 9.*

²⁸⁷ Thus, the morning after his inauguration, “Ubi primum illuxit, senatum et equestrem ordinem in palatium venientem admisit, atque unumquemque, ut erat ætas, vel *patrem*, vel *filium*, vel *parentem* affatus blandissimè est.” *Id. ib. 4.*

²⁸⁸ *Ιουλιανὸς δὲ, ὡς ὡς τὴν ἀρχὴν ἀρπάσας, ἀντιλευδερῶς τοῖς πράγμασιν ἐχρητο, θωπεύων τὴν βουλὴν καὶ τοὺς τι δυνάμειους· καὶ τὰ μὲν ἐπαγγελλομένους, τὰ δὲ χαρίζομένους, προσέγγιλα τε καὶ προσεπαίξει πρὸς τοὺς τυχοῦσας· ἵς τε τὰ διατρετὰ συνεχῶς ἰστέροτα, καὶ συμπόσια πολλὰ συνεκρετὶ· τοὺς τε συμπαν, οὐδὲν ὅ, τι οὐκ ἐπὶ θεραπείᾳ ἤμην ἔποιε. ὡς μάλιστα καὶ πιδάως ην, ἀλλ’ ὡς ἀκρατῶς τῇ θωπιᾷ χρωμένος ὑπερβέβηκε, παρὰ γὰρ τὸ ἐξῶθεν τοῦ ἐκτοσ, ἢ ἢ χαρίζεσθαι τισὶ δοκῇ, δολεροὶ τοῖς ἰουνοῖσι νομίζονται.* *Dio Cass. 73. 14.*

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Though the caution which he found it necessary to adopt restrained him from breaking out into any flagrant acts of personal tyranny, it is certain, that he was not only a bad governor himself, but, what was still more pernicious in its consequences to the true interest of the state, he suffered the administration to fall into the hands of his profligate minions, whom he ought rather to have kept within bounds by his own superior authority¹¹⁹. In further proof of the real depravity of his heart, he courted the favor of a dissolute multitude, by adding to his other titles the name of Commodus; promising to revive many of his institutions which Pertinax had abolished, and to restore the proscribed memory of that cruel and detestable monster¹²⁰.

A prince raised thus suddenly, by the mere dint of corruption, without a virtue to qualify him either to do credit to himself, or to adorn that eminent station, into which he had violently intruded, had no right to expect any other friends, beyond those who had partaken of his ill-bestowed bounty. His authority, therefore, seems never to have extended further than the circle of the city itself, which was kept in awe by a dread of the military force by which he was surrounded: but in the more distant provinces of the empire, several other brave and ambitious commanders asserted their pretensions to the imperial purple; and soon convinced this mock pageant of majesty, of the insignificance of power not founded in the affections of the people. On the approach of Severus towards Rome, he could with difficulty prevail upon the prætorian

¹¹⁹ "Reprehensum in eo præcipue, quod eos, quos regere auctoritate sua debuerat, regendæ reipublicæ sibi præfules ipse fecisset." *Æl. Spart. in D. Jul. 9.*

¹²⁰ Καὶ αὐτοὶ ὅτι γράσσεται τὰ τε ἀλλὰ οὐρανοῦ, καὶ Κομμοδὸν ἐπὶ τοῦ μαζοῦ. *Dio Cass. 73.*

¹²¹ "Scriptis in tabulis, se Commodi memoriam restitutum." *Æl. Spart. in D. Jul.*

¹²² "Multa, quæ Commodus statuerat, Pertinax tulerat, ad conciliandum favorem populi, restituit." *Id. ib. 4.*

bands,

bands, now grown contemptible by their vices, and totally enervated by sloth and debauchery, to face so formidable a foe²⁹¹; and thus forsaken of all good men, and reluctantly supported by his mercenary friends, he was obliged to convoke the senate, and command them to declare his competitor his partner in the empire²⁹². This act of submission was followed by a desertion of all his former dependents, and then, by a decree of the senate, to pronounce his deposition, and constitute Severus the sole Emperor²⁹³; soon after which he suffered the fate he justly merited²⁹⁴.

Septimius Severus, though not a good, was certainly a great, prince; more respectable than amiable, more just than merciful. His life, both private and public, was regulated by the strictest principles of honor, as it was then understood; but a strong propensity to cruelty predominated over the whole²⁹⁵. A mind so formed was not likely to engage the affections, or to recommend him to the

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Sept. Se-
verus,
A. D. 193.

²⁹¹ " Ipse autem Julianus prætorianos in campum deduci jubet, muniri turrets: sed milites desides et urbana luxuria dissolutos, invitissimos ad exercitum militare produxit, ita ut vicarios operis, quod unicuique præscribatur, mercede conducerent." Æl. Spart. in D. Jul. 5. The Greek historian, who was an eye-witness, gives the following ridiculous account of them: Εἰς δ' ὅτι καὶ γινώσκοντες ἡμᾶς ἐλαμβάνον. οὐκ ἔστι γὰρ οἱ δορυφόροι αὐτοῦ οἱ τοῦ σινομάχου καὶ τῆς ἀπαρχῆς ἀφῆναι, ἀλλὰ καὶ ἀβήρους διακινῶντες, μιμηταὶ τῶν βασιλέων, καὶ οἱ περὶ τοῦ καυτικοῦ τοῦ ἐν τῇ Μισσηνῇ ναυλοχοῦντος μεταπηδῶντες, ἀλλ' ὅπως γυμνασθῶνται πρὸς τὸ ἐν ἐλπίδι ἀχθόμενοι τοῖς πυργαῖς, οὐδ' αὐτοὺς ἐπὶ τοὺς ἐπιβάτας ἐφέρον, ἀλλὰ καὶ ἐκινῶντες κατεβαλόν. Dio Cass. 73. 16.

²⁹² Ἐπὶ δὲ ἐκείνῳ (sc. Severus) ἐς τὴν Ἰουλιανὴν ἀφῆναι, καὶ τῷ Ραβέντῳ ἀκούει παραλαβεῖν, καὶ οὗς ἐκείνῳ ἐπ' αὐτοῖς ἐπιμύσει, ἢ πεισθῶντας ὑπογράφει, ἢ ἐκβούλῃς τῶν παρόντων, προσερχομένων αὐτῷ, οἱ τε δορυφόροι, ὡς καλεῖται ὁ Ἰουλιανὸς ἐλαβῆναι, τῇ τε συνήθειᾳ καὶ τῇ ἀποσκευῇ, καὶ πρὸς τὴν φήμην τῆς τοῦ

Σεβήρου παρουσίας διωκῶς ἐξελθὼν ὁ συγκαλεσας ἡμᾶς ὁ Ἰουλιανὸς, κοινῶν αὐτῷ τῆς ἀρχῆς ἐκείνους τοὺς Σιθηρίους ἀποφασισάμενος. Id. ib. 17. " Quare meliorem consilio ad senatum venit, petiitque, ut fieret senatusconsultum de participatione imperii. Quod statim factum est." Æl. Spart. in D. Jul. 6. Id. in S. Sev. 5.

²⁹³ " Brevi autem desertus ab omnibus Julianus, et remansit in palatio cum uno de præfectis suis Geniali, et genere Re-pentino. Actum est denique, ut Juliano senatus auctoritate abrogaretur imperium; et abrogatum est; appellatusque statim Severus imperator." Id. ib. 8.

²⁹⁴ " Missi tamen a senatu, quorum cura per militem gregarium in palatio idem Julianus occisus est." Id. ib. Ὁ μὲν οὖν Ἰουλιανὸς ὅλως ἐν αὐτῷ τῷ παλατίῳ κατεκτείνετο ἐφο-βῶν. Dio Cass. 73. 17.

²⁹⁵ " Vitam suam privatam publicamque ipse composuit ad fidem, solum tamen vitium crudelitatis excusans." Æl. Spart. in S. Sev. 18.

voluntary

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voluntary choice of a free people: but so great was his sagacity, prudence, and application²⁹⁶, that, when once elected, they must have been unwilling to remove him. His talents were so singularly adapted to the confused state of the empire in those ages, that the senate, who well knew the whole turn of his disposition, passed this just observation upon him, "That he should never have been born, or never die; being, at the same time, both too cruel, and too useful to the public²⁹⁷."

The greatest part of his reign, which fell little short of twenty years, was occupied in military exploits²⁹⁸, that were both honorable to himself, and serviceable to his country, in various regions of the empire; so that he had less leisure for the exercise of his civil and political talents; though equally qualified to shine both in peace and war. On his first appearance in Rome, after being proclaimed Emperor, he was extremely liberal in his assurances to the senate; promising them a general indemnity and security of their persons, which he not only confirmed with an oath, but likewise by a law, that if the Emperor should ever put a senator to death, both he and his accomplices, with their children and families, should be declared public enemies to the state; and yet he was himself the first violator of his own law, by the massacre of great numbers²⁹⁹.

He

²⁹⁶ Δινοτάτος ὁ Σεῖρος ην. το τε μέλλον ακρίβως προνοήσαι, και το παρον ασφαλως διοικήσαι, και παυ το κικ. υμνουν ὡ. και εμφανες εξετειν, παυ δε το δυσ- διαθετον ὡ: και ἔατον εξεργασασθαι. Dio Cass. 73. 15. "Acer ingenio, ad omnia quæ in- tendisset, in finem perseverans." Sex. Aur. Vict. ep. 20.

²⁹⁷ De hoc senatus ita judicavit, "*illum aut nasci non debuisse, aut non mori, quod et nimis crudelis et nimis utilis reipublicæ videtur.*" Æl. Spart. in S. Sev. 18.

²⁹⁸ "Felix ac prudens, armis præcipue: adeo, ut nullo congressu nisi victor disces-

"ferit: auxcritque imperium, subacto Per- farum rege nomine Agarro." Sex. Aur. Vict. de Cæf. 20. "Fuit bellicosissimus omnium, qui ante eum fuerant. Id. ep. 20.

²⁹⁹ Εισιλθων δε βύλως εναντιουσάλο μιν, δια και οι πρωτη αγαθοι αυλοκρατορες, προς ημας, ως ουδεια των βουλευτων αποκλινη και ωμοσε περι τουτου, και το γι μαιζον, ψηφισματι κοινω αυλο κυρωθηναι προσέβη- χη, πολιμοι και τον αυλοκρατορα και τον υπηρησούσα αυλο ις τι τοιουτον, αυλους τε και τους παιδας αυλων, νομιζοσθαι δογματισας. πρώτος μιντοι αυλος τον νομον τήσων παρηβη, και ουκ εφυλαξε, πολλους ανλων

He had given early signs of a disposition to polite literature in general ³⁰⁰, but especially to the study of the law, and the administration of justice; so that his favorite amusement, even while a youth, was to seat himself in a mock tribunal, surrounded with a band of play-mates, armed, in their puerile style, with the usual ensigns of office ³⁰¹. In times of peace, he devoted all his leisure to the business of civil government; beginning the day with inquiring into, and giving directions about, whatever concerned the public tranquillity. He then proceeded to the seat of judicature, where he presided till mid-day with peculiar impartiality and dignity; hearing the litigants with patience, and allowing unlimited liberty to the senators, who sat in judgment with him, to deliver their sentiments upon the question in issue ³⁰².

The reign of Septimius was particularly propitious to the science of the law, his chief favorites and counsellors being selected out of that learned order; among which, to the great credit of his discernment, were Papinian, Paulus, and Ulpian, three of the most rational and upright civilians that ever graced the profession of jurisprudence. But of these much more will be said in a subsequent part of the present work. Under their advice and inspection he enacted many wise and equitable laws ³⁰³, for the use of the empire.

Dio Cass. 74. 2. "Fieri senatusconsultum
"coegit, ne liceret imperatori inconsulto sena-
"tu, occidere senatorem." *Æl. Spart. in S. Sev. 7.* "Occidit autem sine causæ dictione
"hos nobiles," &c. *Id. ib. 13.*

³⁰⁰ "Severus autem præter bellicam glo-
"riam, etiam civilibus studiis clarus fuit, et
"litteris doctus, philosophiæ scientiam ad
"plenum adeptus." *Eutr. 8. 9.*

³⁰¹ "In prima pueritia, priusquam Lati-
"nis Græcisque litteris imbueretur, quibus
"eruditissimus fuit, nullum alium inter
"pueros ludum nisi ad *Judices* exercuit;

"cum ipse, prælatis fascibus ac securibus,
"ordine puerorum circumstante, sederet ac
"judicaret." *Æl. Spart. in S. Sev. 1.*

³⁰² Εχρηστο δι' ὃ Σίβηρος μάλα σπουδῆς τοῦ βίου, κρηνης οὐσης, τοιαυτὴν ἐπραττε τι παύως τυχεὶς ὑπὸ τῶν οὐρανῶν, καὶ μάλιστα τοῦτ' ἐβιάζετο, καὶ λέγων καὶ ἀκουὼν τὰ τῇ ἀρχῇ προσφορὰν· οὐτ' ἐδικάζει, χωρὶς, εἰ μὴ τις ἰορὴ μεγάλη ἦεν. καὶ μάλιστα καὶ ἀρίστα αὐτοῦ ἐπραττε. καὶ γὰρ τοῖς δικάζουσι ὕμνους ἱκανοὶ ἐνέχον, καὶ ἡμῖν τοῖς συνδικάζουσιν αὐτῇ παρρησιαὶ πολλὴν ἐίδου ἐκρη-
ν δι' ἡμῶν μεσημβρίας. *Dio Cass. 76. 17.*

³⁰³ "Legum conditor longe æquabilium."
Sex. Aur. Vict. de Cæs. 20.

This prince, though crowned with military glory, had the misfortune to find the comfort of his latter days disturbed by the fatal dissensions among his progeny, and by attempts even from thence against his own life¹⁰. But these mortifications contributed little towards softening the rigor of his nature; as his dying advice to his sons, "to agree among themselves, to enrich the soldiery, and

364 " Neque multo post Britannia muni-
cipio, cui Eboraci nomen, annis regni
" duodeviginti morbo extinctus est." Sex.
Aur. Viſt. de Cæſ. 20.

305 *Κ' αὖ τῇ καίρῳ τούτῳ, τῇ τε σιγῇ καὶ τῇ* and to his tendernefs, as a father.
κρίσει τοὺς ἰσχυροὺς ὁ Ἀθλωνὶς ἀναχαιτίζων, ἰσχυροὺς

“despise the rest of the world³⁰⁶,” shews what little weight the general welfare of the empire bore in his affections, when set in opposition to the interest of his own aspiring family. And yet, after the vast tide of success which accompanied his arms, he both lived and died discontented; peevishly declaring, when arrived at the summit of his power, that “he had passed through every station of life, but “found satisfaction in nothing³⁰⁷.”—Thus unhappily must the proudest monarchs of the universe both live and die, when destitute of the comfort of virtue and religion, to support them under the disappointments of the world; to give them a just relish for the blessings of it; and to aid them in their final conflict with the king of terrors.

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The whole that will be necessary to say of his son and successor, M. Aurelius Antoninus Bassianus, better known in history by the surname of Caracalla, is, that his whole reign was a continued scene of the most frantic violence and cruelty; begun with the murder of his own brother, and carried on with the extirpation of every person of merit and honor, that came within the reach of his unsparing sword³⁰⁸. Having been suffered to remain too long the dread and pest of mankind, he was at last murdered by Macrinus, the captain of the guards; who first usurped his throne, and then repaired the injury, by granting him a place among the gods³⁰⁹.

Caracalla,
A. D. 211.

³⁰⁶ Πριν γουν μεταλλαξαι, ταδι λεγεται τοις παι-
σιν επιν· (ισω γαρ αυτα τα λεχοντα, μηδεν ο, τι
καλλωπισαι) “Ομοιοιτι, τους γερατωιας πλουτιζι-
τι, τωι αλλωι παλιν καταφρονιτι.” Dio Cass. 76.
15.

³⁰⁷ “Hujus dictum est, cum eum ex hu-
mili per literarum et militiæ officia ad im-
perium plurimis gradibus fortuna dæisset,
“omnia, inquit, fui, et nihil expedit.” Æl.
Spart. in S. Sev. 18.

³⁰⁸ “Ο δε Αιλιανος, τω πατρωι αποθανοντι, λα-

βομενος εξουσιας, ευθυσ εφ’ εστιας παλιας φονευει ηρξαιο.
Herod. 3. 50. edit. Omon. 1678. Της τε
συγκλητης βουλης δοσι γινει η πλεστη υπεριχοι, επι
βραχυταταις η ουδ’ υφιστας αιτιας, εκ της τυχη-
σης διαβολης ως εκανω φιλοι ανηκουσι. Id. 4. 11.

³⁰⁹ “Hic tamen omnium durissimus, et,
“ut uno complectamur verbo, parricida et
“incestus, patris et matris et fratris inimi-
“cus, a Macrino, qui eum occiderat, timore
“militum, ac maxime prætorianorum, inter
“Deos relatus est.” Æl. Spart. in Car. 11.

BOOK
III.Macrinus,
A. D. 217.

Opilius Macrinus was a person of low origin, of a base mind and mean person³¹⁰; proud and sanguinary; fond of military power³¹¹; and received as Emperor by the fathers, from no other principle, than that of hatred to Caracalla; "thinking any one better than a parricide, than an incestuous and libidinous monster, the general assassin of the senate and people³¹²." This contemptible old man was almost blind with age; so illiterate, that he could not read; and so utterly unexperienced, that he was incapable of transacting any business whatever³¹³. From a governor so profoundly ignorant, it would be in vain to expect any improvements in the political state of the empire: but had he confined himself to his military department; had he selected a proper person out of the senate, and supported him in the throne by his power, instead of usurping it himself, he might have deserved the praises of all good men, and have avoided the fate of his predecessor, which so speedily overtook him³¹⁴.

Heliogabalus,
A. D. 218.

The administration (if it can be so called) of Heliogabalus was a series of every kind of vice and effeminacy³¹⁵, that could debase the noble soul of man, and render him more vile and contemptible than

³¹⁰ "Humili natus loco, et animi atque oris inverecundi." Jul. Cap. in Op. Macr. 2. Ὁ δὲ δὴ Μακρινός, τοῦ μὲν γένος Μαυρός, ἀπὸ Καίσαρειας, γόνων ἀδοξοτάτων ἢ, ὥς καὶ σφοδρὰ ἐκπετὸς αὐτοῦ τῷ οὐρῷ, ἐς τὸ παλατιὸν ὑπὸ τοῦ δαιμονίου ἐσαχθῆναι, ἐκασθῆναι. Dio Cass. 78. 11.

³¹¹ "Fuit igitur superbus et sanguinarius, et volens militariter imperare." Jul. Cap. in Op. Macr. 12.

³¹² "Quamvis fenatus eum imperatorem odio Antonini Bassiani libenter acceperit, cum in senatu omnibus una vox esset: *quemvis magis quam parricidam, quemvis magis quam incestum, quemvis magis quam impurum,*

quemvis magis quam interfectorem et fenatus et populi." Jul. Cap. in Op. Macr. 2. Οὐχ οὕτω δὲ ἐνθραίνε παλαιὸς ὁ Μακρινὸς διαδοχῇ, ὥς ὑπὲρ τοῦτο τε καὶ παύνηται ἰσχυρὰ ἐπὶ τῇ Αἰγυπτίῳ ἀπαλλαγῇ. Herod. 5. 2.

³¹³ Μὲν δ' ὅρα ὑπὸ γῆρας, μὴτ' ἀταγισσῶν ἐκ ἀπαίδευσις, μὴτε πράττειν τι ὑπ' ἀπειρίας δυνάμειος. Dio Cass. 78. 14.

³¹⁴ Ὁ μὲν ἐπὶ τῇ αὐτῇ παλαιᾷ ἀνδρωπύῳ, ἢ γὰρ μὴ αὐτὸς αὐταρχῆσαι ἐπέδουμηναι, ἀλλ' ἐπιβέβηκε τῷ αὐτῷ ἐς γὰρ τῇ γούρῳ τῶν τελευτῶν, τῆς τῶν Ῥωμαίων ἀρχῆς προστατῆσαι, αὐτοκράτορα αὐτοῦ ἀποδιδίχαι. Id. ib. 41.

³¹⁵ "Impudicissime et obscenissime vixit." Eutr. 8. 12.

the

the brute creation. As nothing occurs during this short period, that can give the least satisfaction to a rational mind, or contribute to illustrate the particular subject of our inquiry, we shall joyfully pass over to his incomparable successor; under whose gentle influence the beams of political wisdom and orderly legislation once more broke forth from those clouds, by which they had been so long obscured; and, for a while, diffused tranquillity and happiness over this distracted government.

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Both the army and senate united in the nomination of Aurelius Alexander; and complimented him with the usual titles of inauguration³¹⁶. This youth, though not then quite fourteen years old, displayed a bright assemblage of uncommon virtues, that would have been an ornament even to the prime of manhood; and in the midst of a debauched, voluptuous and degenerate age, stood forth a perfect example of modesty, wisdom and piety³¹⁷. The tender affection of a careful and discerning mother had placed him in the hands of the ablest præceptors; who cultivated his mind with so much assiduity, and instilled into him so early a taste for all branches of learning, both civil and military, that, young as he was, he never passed even a day, by his own good will, without making some advances toward the improvement of his understanding³¹⁸. To guard against the dangerous impressions of licentious company, she suffered none to approach him but those of the most approved

Alexander
Severus,
A. D. 222.

³¹⁶ "Succedit huic Aurelius Alexander; " certe sanctus et utilis reipublicæ." Id. ib. 4.
" ab exercitu Cæsar, a senatu Augustus no-
" minatus: juvenis admodum." Eutr. 8.
13. " Interfecto Vario Heliogabalo,—ad
" remedium generis humani Aurelius Alex-
" ander—accepit imperium; cum ante Cæ-
" sar a senatu esset appellatus." Æl. Lamp.
in Alex. Sev. 1.

³¹⁷ "Erat cunctis hominibus amabilis: et
" ab aliis pius appellabatur: ab omnibus
" A primâ pueritiâ artibus bonis im-
" butus, tam civilibus quam militaribus, ne
" unum quidem diem sponte suâ transire
" passus est, quo non se ad literas et ad mi-
" litiam exerceret." Id. ib. 3. Ἡ μὲν τοι
δοικησις τῶν πραγμάτων, καὶ τῆς ἀρχῆς οἰκονομία
ὅπο ταις γυναιξὶ δεικνύτο, ἐπὶ τῶν το σωφροσύνης
καὶ σημαντικῶν παρὰ μὲν αὐτῶν πειρώτο. Herod.
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morals³¹⁹. And not even to allow him time for the practice of vice, he persuaded him to give a close attendance to the courts of justice, and to other arduous affairs of government³²⁰; wherein he was assisted by the ablest persons that could be selected out of the senate; and among the rest, by the celebrated Ulpian, who had before been distinguished by the friendship and confidence of Septimius Severus; and, for his wisdom and integrity, was called the Cato of the age³²¹.

On ascending the throne he refused the title of *Lord*, contenting himself with that of *Emperor*, and desiring to be addressed only as one of the senators³²². This prohibition, however, did not prevent them from immediately saluting him with the names of Augustus, and Pater Patriæ; nor from bestowing upon him the proconsular and tribunitian power, together with the right of making five motions in one day; honors, which, heretofore, it was neither consistent with the dignity of the senate to grant all at once, nor with a good prince to covet. The historian, therefore, thinks himself under a necessity of apologizing for the precipitate conduct of this high assem-

³¹⁹ 'Η δὲ Μαμαμμία, μὴτε τῷ παιδί καθάλαμψεν· σα, ὁμοίως αὐτῷ ἀρχῇ τε καὶ κρατὶ ἐπιτραπὴ· ἢ δὲ τε ὅμως ὡς ἀρχῇ τοι μακρὰ γινόμενος, καὶ διδάσκων, μὴ ἀρὰ ἡλικία ἀκμαζούσα, ὑπερηφάνος ἀδίας τε καὶ ἐξουσίας, εἰς τι τῶν γυναικῶν ἀμαρτημάτων ἐξοικίλη, παῖδα χροδὴν ἐφάρει τῷ αὐλῷ. ἢ δὲ τίνα· οὐκ ἀποσιναί τῷ μαιρακίῳ τῶν ἐπὶ Φαυλῇ βίῃ διαβιβλημένων, μὴ πως τοῦ ἡδὸς διαφθορῆς, προκαλεσάμενος αὐτοῦ τῶν κολακῶν τὰς ὀριζίας ἀκμαζούσας εἰς αἰσχρὰς ἐπιθυμίας. Herod. 6. 2.

³²⁰ Δικάζειν τι οὐ αὐτοῖς ἐπιτελεῖται συνεχισταί καὶ ἐπὶ πλείονος τῆς ἡμέρας· ὥς αἱ ἀσχολούμενοι περὶ τῶν κρείττονα καὶ τῇ βασιλείᾳ ἀναγκαῖα, μὴ ἔχουσι καιροὺς εἰς τοῦ ἐπιτηδίου τι τῶν ἀμαρτημάτων. Herod. 6. 3.

³²¹ 'Η (ἰ.ε. ἡ μητὴρ Μαμαμμία) τῶν τῶν πραγμάτων οἰκονομίας μετακίχμητο, καὶ περὶ τοῦ υἱοῦ σοφοῦς ἀνδρὸς συνηγάγει, ἵνα δ' ἐκινῶν αὐτὴν τὰ ἡδὴ ἐυδαιμόνοι· κα' ἐκ τῆς γερουσίας, τῶν ἀμεινοῦς συμ-

βουλῶν προσέλατο, αἵματι πρακτικοῖς κοινουμένη αὐτοῖς· Δομνίῳ δὲ τῷ Οὐλπιανῷ τῷ τε τῶν δορυφορῶν προτάσας, καὶ τὰ λοιπὰ τῆς ἀρχῆς ἐπιτελεῖν πρᾶγματα. Dio Cass. 80. 1. "Cato temporis sui, Domitius Ulpianus jurisperitissimus." Æl. Lamp. in Al. Sev. 68. Πρῶτον μὲν τῆς συγχεῖν τῇ βουλῇ, τῶν δακτύλων καὶ ἄλλων σημάτων, καὶ βίῃ σωφροσύνης, ἱκανοῦς ἐπιτελεῖν, συνεδρῶν ἰσχυρῶς καὶ συμβουλῆς τοῦ βασιλέως. οὐδὲ τι ἐλογίετο ἡ ἐπὶ τῷ ἰστο, μὴ κ' ἀκροῖ αὐτοῦ ἐπικριτικῶν, συμψηφίον ἐγὼ· οὐδὲ, ἥσκει τι τῷ δήμῳ, καὶ τοῖς γεραιότεροις, ἀλλὰ καὶ τῇ συγχεῖν βουλῇ, τοῦ σχήματος τῆς βασιλείας, ἐκ τυραννίδος ἐφύεργε εἰς αἰσχροκρατίας τυπὸν μετακίχμησιν. Herod. 6. 1.

³²² "Dominum se appellari vetuit. Epistolas ad se quasi ad privatum scribi jussit, servato tantum nomine Imperatoris.— Solutaretur vero quasi unus de senatoribus." Æl. Lamp. in Alex. Sev. 4.

bly upon the present occasion, by saying, that as the army had often CHAP. V. usurped the practice of conferring many of these titles and privileges in a hasty and tumultuous manner, pretending to be ignorant that the senate had already done it, they were now willing to anticipate them in the compliment³²³. Not that he was ambitious of these titular honors; on the contrary, he strenuously persisted in refusing any other than what had been given him on his accession: but, having shewn a singular fortitude and spirit in opposing the insolence of the army, the soldiers gave him the name of *Severus*; which, as it arose from the exercise of a popular virtue, procured him great reverence in the eyes of his contemporaries, as well as glory with posterity; he being the only prince upon record, who had had the courage to cashier a tumultuous army³²⁴.

Like a true patriot prince, he considered the supreme authority wherewith he was invested, as a trust only for the benefit of his country; which it was his duty to exercise for that purpose, with firmness, judgment, and impartiality. Wishing to strike at the root of the prevailing abuses of the times, he undertook to reform the great legislative body of the state, and to restore its antient reputation and dignity, by an extreme circumspection in the choice of its members;

³²³ —“ addito eo ut et Patris Patriæ nomen, et jus proconsulare, et tribunitiam potestatem, et jus quintæ relationis, deferente senatu, uno die assumeret. Et ne præceptis ista honorum continuatio videatur, exponam causas quibus id et senatus coactus est facere, et ille perpeti. Non enim aut gravitati senatus congruebat omnia simul deferre, aut bono principi raptim ire tot simul dignitates. Milites jam infuerant sibi imperatores et tumultuario judicio facere, et item facile mutare, afferentes nonnunquam ad defensionem, se idcirco fecisse, quod nescissent senatum principem appellasse.” *Æl. Lamp. ib. 1.*

³²⁴ —“ Multo clarior visus est alienis nominibus non receptis, quam si recepisset. — Sed quamvis senatu rogante non potuerit persuaderi, ut vel Antonini vel Magni nomina susciperet, tamen ob ingentem vigorem animi, et mirandam singularemque constantiam contra militum insolentiam, *Severi* nomen a militibus inditum est, quod illi ingentem reverentiam, magnam apud posteros gloriam peperit; cum eo accessisset, ut de animi virtute nomen acceperit: siquidem solus inventus sit, qui tumultuantes legiones exauctoravit.” *Æl. Lamp. in Al. Sev. 12.*

and

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and by never suffering any to be admitted to a seat in that august assembly, without the unanimous approbation of his council, supported by ample testimonies of their qualifications³²⁵. He likewise enacted many laws for the security of the general rights of the people; as well as others, to regulate the claims of the exchequer; all of which, however they might affect his own interest, were of a very moderate tendency; and were never passed without the advice of the most expert lawyers of the age³²⁶.

But, above all, let it be remembered to the eternal honor of the Christian religion, that the perfection of this prince's virtues; the innocence of his life; the purity of his morals; his active zeal for the good of his people; his mercy and benevolence to all mankind; novelties long unknown to the imperial throne of Rome; may in a great measure be ascribed to the golden rule of the Gospel, "of doing as he would be done by:" a rule by which he not only regulated his own conduct, but took care to enforce the observance of it upon others. When he saw any one committing a trespass upon another's land, he caused him to be corporally punished, according to his respective quality; always rebuking him by this question; "would you like to have another do in your field what you do in his?" This rule he had constantly in his own mouth, and caused it to be proclaimed by the common cryer, at the instant he was endeavouring to reform an offender; holding it in such high reverence, as to have it inscribed upon the front of his palace, and of other public edifices³²⁷.

From

³²⁵ "Senatorem nunquam sine omnium
" senatorum qui aderant consilio fecit, ita
" ut per sententias omnium crearetur,
" testimonia dicerent summi viri." *Æl.*
Lamp. ib. 19.

³²⁶ "Leges de jure Populi et Fiscī mo-
" deratas et infinitas sanxit; neque ullam

" constitutionem sacravit sine viginti juris-
" peritis et doctissimis ac sapientibus viris."
Id. ib. 16.

³²⁷ "Si quis de via in alicujus possessionem
" deflexisset, pro qualitate loci, aut fustibus
" subiciebatur in conspectu ejus, aut virgis,
" aut condemnationi; aut, si hæc omnia
" transiret

From hence it may be reasonably concluded, that, though not a convert to Christianity, he was no stranger to its moral excellences; and that the knowledge he had of them, imperfect as it was, made him both a better man, and a better governor. Enamoured with the benevolence of its doctrines, he became its avowed friend and protector; and proposed to erect a temple to the honor of its divine author, in imitation of those which Hadrian had formerly founded, without images, in every city. This design he certainly would have executed, had he not been dissuaded by some crafty adherents to the antient superstition; who, under pretence of having consulted the auspices, foresaw that the proposed toleration of a religion of such superior purity, must end in its universality; causing their own temples to be deserted, and their false deities to be set at naught²²⁸.

These singular anecdotes clearly point out another source of that inveterate rancor which had so long, and so universally, prevailed against the professors of Christianity. A religion, which taught man to know himself, and the great end of his creation; which enforced the observance of the moral and social duties, and gloried in the simplicity of its ceremonies; could not fail to rouse the jealousy, and humble the pride, of the vain philosophers and haughty disputants of the world; nor less to mortify the avarice of the self-interested ministers, and inferior retainers of idolatry; and make them tremble for the decline of that lucrative traffic, which they derived from the folly and ignorance of its bigotted votaries. A con-

"transiret dignitas hominis, gravissimis
"contumeliis; cum diceret, *Vixne hoc in*
"agro tuo fieri, quod alteri facis? Clama-
"batque sæpius, quod a quibusdam sive
"Judæis, sive Christianis audierat, et tene-
"bat; idque per præconem, cum aliquem
"emendaret, dici jubebat, *Quod tibi fieri non*
"vis, alteri ne feceris. Quam sententiam
"usque adeo dilexit, ut et in palatio et in
"publicis operibus præscribi juberet." *Æl.*
Lamp. in Al. Sev. 51.

²²⁸ "Christo templum facere voluit, eum-
"que inter Deos recipere, quod et Hadri-
"anus cogitasse fertur, qui templa in omni-
"bus civitatibus sine simulacris jusserat fieri:
"quæ hodie idcirco quia non habent numina,
"dicuntur *Hadriani*, quæ ille ad hoc pa-
"râsse dicebatur: sed prohibitus est ab iis
"qui consulentes sacra, repperant omnes
"Christianos futuros si id optato evenisset,
"et templa reliqua deferenda." *Id. ib.*

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spicuous example of this selfish zeal is preserved in the history of the tumults at Ephesus; on which occasion the private emoluments of particular craftsmen were urged as solemn arguments against the reception of the divine truths delivered by the apostle ³²⁹.

But these religious prejudices were not peculiar to the ages of Christianity. They had long before been levelled, with every horrid circumstance of violence and barbarity, against the Jews, who were equally zealous in their worship of the unity of the Godhead; from the noble captives in Babylon, under Nebuchadnezzar ³³⁰, to the heroic matron and her seven sons, before the tribunal of Antiochus Epiphanes ³³¹. These artificial and studied cruelties, naturally coinciding with the ferocious humour and savage superstition of the Roman tyrants, readily served as precedents against thousands of Christian martyrs, whose innocent blood was openly and wantonly shed in the face of the world, through every region of the empire; and whose unmerited sufferings will perpetuate the infamy of their persecutors, and defy the acutest wit of the most determined infidel to shake their testimony.

It is very possible, that the accounts of these butcheries may have been exaggerated; but, without insisting upon the multitude of victims, instances will always remain, more than sufficient to prove the open avowal, and actual prevalence, of this malicious and destructive spirit of persecution; and that a general liberty of conscience was no more a principle of the religious system of antient, than of modern, Rome. In truth, such as have since been the bloody rulers of that merciless church, such likewise were too many of the Roman princes of old; those renowned and accomplished champions of Polytheism, so highly extolled for the liberality of its tenets, and the elegance of its ceremonies ³³².

The

³²⁹ Acts xix. 23. et seq.

³³⁰ Dan. iii. & vi.

³³¹ Maccab. ii. 7.

³³² Painful as the recollection of such barbarities must be to every feeling heart, it may not be improper to observe, that, of all the various

The early age at which Alexander came into possession of the throne; his complacent manners, and equitable sway, afforded every reasonable expectation of universal happiness to the people, as well as of an ample reparation of their blasted honors. But Providence, in whose hands is the fate of nations, having other important and unfathomable designs in view, incompatible with the existence of this once-glorious empire, was pleased suddenly to cast down this fair pillar of its hopes, when just brought to the height of its strength and beauty. That fatal stroke was immediately succeeded by a series of tumult, treason, and massacre, which continued to the end of the century; and of which a parallel is hardly to be found in the annals of any civilized country from the beginning of time. The

various modes of torture invented by these chief ministers of the great enemy of mankind, *fire* was one of the most universal, and particularly in those cases where religion had any concern. This practice is supposed to have been in the eye of the Psalmist, in the following exclamation: "Thou shalt make them like a *fiery oven* in the time of thy wrath." Ps. xxi. 9. Lowth on Dan. iii. 6. Thus the two impostors were punished by Nebuchadnezzar, of whom the prophet speaks: "And of them shall be taken up a curse by all the captivity of Judah which are in Babylon, saying, The Lord make thee like Zedekiah and like Ahab, whom the King of Babylon *roasted in the fire*." Jer. xxix. 22. The Syrian tyrant, after many bloody experiments, tried upon the piety and constancy of the eldest of the Jewish young men, "When he was thus maimed in all members, commanded him, being yet alive, to be brought to the *fire*, and to *fried in the pan*." Maccab. vii. 5. The exact counterpart of these diabolical cruelties was frequently repeated in the times of the Diocletian persecution; which horrid process is thus minutely described by a writer of the same age: "Dignitatem non habentibus poena *ignis* fuit, et exilii primo adversus Christianos permiserat, datis legibus, ut post tormenta damnati *lentis ignibus ure-*

rentur. Qui cum deligati fuissent, subdebatur primo pedibus *lenis flamma*, tam diu donec callum solorum contractum igni ab ossibus revelleretur. Deinde *incense facies*, et extinctæ admovebantur singulis membris, ita ut nullus locus in corpore relinqueretur intactus. Et inter hæc suffundebatur facies aqua frigida, et os humore abluebatur, ne arescentibus siccitate faucibus cito spiritus redderetur; quod postremo accidebat. Tunc per multum diem decocta omni cute, *vis ignis* ad ima viscera penetrasset. Hinc *rogo facto cremabantur*. Corpora jam *cremata*, lecta ossa et in pulverem comminuta jactabantur in flumina ac mare." Laët. de Mort. Persec. c. 21. edit. Traj. ad Rhen. 1693. On some occasions, whole companies of people, of all ages and sexes, were consumed in one general conflagration. "Comprehensi presbyteri ac ministri, et sine ulla probatione ad confessionem damnati, cum omnibus suis deducebantur. Omnis sexus et ætatis homines ad *exustionem* rapti. Nec singuli, quoniam tanta erat multitudo, et gregatim *circumdato igni* ambiebantur." Ib. c. 15. Many more instances to the same effect might be produced, from other credible authors of those times, did not the mind revolt at so horrid a detail.

laws no longer preserved their just authority; the terrors of the capital were disregarded; confusion and disobedience suspended the powers of government at home; and revolt, rebellion, and defiance threatened the utter extinction of it from abroad.

C H A P. VI.

An Inquiry into the Nature and Extent of the "Lex Regia."

THE design of the foregoing chapter was to shew the various appearances and effects of the imperial power, in the hands of the successive princes for the two first centuries after its establishment; and how far it was extended, restrained, or moderated, according to the different tempers and dispositions of those by whom it was respectively exercised. It is now time to take a nearer view of this famous supposed act of the legislature, from whence it is said to have derived its immediate origin and authority.

The unlimited and extraordinary powers occasionally conferred upon Augustus by the concessions of the senate and people; or extorted from them, with stronger circumstances of violence, by his more arbitrary successors; have given birth to the common opinion, that the constitution was made despotic, and that the absolute sovereignty was annexed for ever to the imperial title, by a declarative act of the state, usually called the "Lex Regia:" by which law, as it is recited by Justinian¹, some expect us to believe, that the people wilfully relinquished all their antient constitutional rights, more especially that of legislation; and transferred them with one accord into the hands of the Emperor, in the most ample and accumulative manner that language can express.

¹ "Sed et quod principi placuit legis habet vigorem: quum *Lex Regia*, quæ de ejus imperio lata est, promulgata est in eum omne imperium suum et potestatem concedat." I. 1. 2. 6. The same is preserved,

without any material variation, in D. 1. 4. 1. pr. And again, "Lege antiqua, quæ *Regia* nuncupatur, omne jus omnisque potestas populi Romani in imperatoriam translata sunt potestatem." C. 1. 17. 1. 7.

The origin of this law is, by most modern writers, referred to the age of Augustus; though it is a circumstance well worthy of observation, that no such law either now does, or was ever known to have existed; and that neither the name of Augustus, nor of any other particular prince, is once mentioned by Justinian in the passages here cited; so as to enable us to determine, with any degree of certainty, in whose favor, or upon what occasion, it was enacted. A law, which at once would have totally changed the face of the Roman constitution, and have annihilated a power, that, with little interruption, had resided in the collective body of the people, for the five centuries immediately preceding, must have been a phenomenon in politics, too remarkable to have escaped the notice of the most inattentive and superficial annalist. And yet it is certainly true, that not even the most accurate and best informed historians, who lived the nearest to those times, have left us any reason to suppose that they ever had the least knowledge of such an act of the legislature.

As it has so little foundation in fact, it has still less in probability. Augustus, with all his moderation, would hardly have rejected so substantial a compliment, when unanimously made him by the whole people; or have failed to cause a law, which would at once have secured independency to himself and his successors, to be recorded as speedily as possible, and to be authenticated with every public mark of notoriety. But, in truth, it was contrary to the professed policy of this wise prince ever to aspire to any such state of dangerous pre-eminence. His uniform principle was to avoid all invidious marks of sovereignty, and to preserve (as we have already abundantly seen) every exterior appearance of the antient commonwealth. The old republican spirit was now indeed much broken and depressed; but the lion, though aged and infirm, might

awake from his slumbers; and had still vigor and courage enough remaining, to startle and revolt at the name of King, and to betray his natural antipathy to every thing that favoured of the regal dignity. Mæcenas indeed advised him to assume a share of legislative power to himself; but still upon condition of not exercising that power, without consulting with the first persons of the senate^a: which advice he always very carefully followed.

His successors, though of characters too often the direct reverse of his own, and with very little concern for the real interests of the people, wanted not penetration to discern, that the genius of Rome, even in the state of debasement she then was, would not look with patience upon the gaudy pageantry of absolute monarchy. They contented themselves therefore with the more modest appellation of *Imperator*, which they were at liberty to assume and repeat as often as they pleased; and by thus appearing to prefer military glory to civil power, they flattered the high spirit of a warlike people, without alarming their apprehensions; they even affected to be worshipped as gods, when they declined the title of kings. If then there was such magic in a single word, as to diffuse terror and disgust through the minds of so many millions, it is not to be supposed that a law, bearing so invidious a mark, could ever have been received by them with any degree of approbation, much less of obedience.

The most rational way, therefore, of accounting for the rise and growth of this very universal error, is from that surprising concurrence of fortunate circumstances, which placed Octavius at the head of the Roman world. The people, wearied out with the struggles of opposite factions, and with the oppressions of an insolent and overbearing aristocracy, were eager to fly for protection to the arms

^a Ἴνα καὶ γένος αὐτοῦ ἢ καὶ ἑ, τὶ αὖ βουλευσάμεναι σοὶ μετὰ τῶν ὁμοτιμῶν ἀρίστον. Dio Cass. 52. 15.

of a young conqueror, who, by his wisdom, prowess, or good fortune, had obtained a decisive superiority over all his competitors; who was now able to quell these tumultuous spirits, and to reduce them all to a more reasonable level. Finding that he had both the will and the power to insure to them the blessings of peace, which their distracted state had so long panted after, they were, perhaps, not less glad to throw the burden of the government upon his shoulders, than he might be to take it up. He became their sovereign, therefore, even by the very exigencies of the times; and by prudently associating himself with all the other public magistrates in their turns; by treating them as his colleagues in office, and by affecting no greater share in the administration than themselves, he was in fact a king, without assuming any determinate title whatever³. Thus by coveting nothing, he obtained all; and made it the interest of the people to grant, what would have been very impolitic in himself to demand. Well convinced that he was not disposed to abuse their confidence, they daily strengthened his hands by new concessions, till they had hardly left themselves any further favors to bestow⁴.

"Thus," according to the account of a well-informed historian⁵, "the whole power both of the senate and people, was transferred to Augustus; and though sometimes two or three others enjoyed

³ To the same purpose says the historian of the Emperors in general, 'Οὕτως ἐκ τούτων τῶν δημοκρατικῶν ὀνομάτων, πάσαι τῆς πολιτικῆς ἰσχύος περιβιβλάνται. ὥς καὶ τὰ τῶν βασιλέων, πλὴν τῆς φορτικῆς τῆς προσήγορίας, αὐτῇ, ἔχουσιν. Dio Cass. 53. 18.

⁴ Ταῦτα μὲν ἐκ τῆς δημοκρατίας, ὥς πού καὶ ἡμεῖς νομοῦμεν, ὅσα τε καὶ διὰ τούτων τῶν ὀνομάτων ἐληφασιν, ὅπως μὴδὲν αὐτοῖς δόσεις τινας ἔχουσιν δοκῶσι. Id. 53. 17.

⁵ The whole of this passage is so very remarkable, that it is well worth while to consider it as it stands in the original. Dio Cass. 53. 17. 'Οὕτως μὲν δὲ τοῦ, τὰ τῆς δυνάμεως καὶ τοῦ τῆς

γερουσίας μέρους πάντες τὸν Αὐγούστου μεταστή. * * * * * μοναρχία γὰρ, ἢ καὶ τὰ μάλιστα καὶ διὰ καὶ τῆς αἵμα τοῦ κυρὸς ποτὶ ἰσχύος, ἀληθινὰ αὐτῶν νομίζονται. τοῦ μὲν γὰρ ὀνόματος αὐτῶν τὸ μοναρχικὸν ὅσα δὲ τὶ οἱ Ῥωμαῖοι ἐμίσσηται, ὥς μὴτε δικτατορίας, μὴτε βασιλείας, μὴτ' ἄλλα τῶν τοιούτων τρόπων τῆς ἀσκήσεως, σφῶν ὀνομαζέσθαι. τοῦ δὲ διὰ τῆς πολιτικῆς πλὴν αὐτῶν ἀνακρίμεναι, οὐκ ἔστιν ὅπως οὐ βασιλεύουσιν. * * * διαγίνεται δὲ καὶ διοικεῖται πάντα ἀπλῶς, ὅπως αὐτοὶ αἱ κρατὺν ἐδίδουσι καὶ ἡγεῖσθαι μὴ ἐν δουλείᾳ, ἀλλ' ἐκ τῶν ὀνομάτων τῶν ἔχουσιν δοκῶσι, παρὰ δὲ ὅσα αὐτῶν δημοκρατία μὲν γὰρ ἔκουςι σφῶν ἰσχύουσιν, αὐτοῖς τοῖς ὀνόμασι, χωρὶς τῆς δικτατορίας, προσποιήσαντο.

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“ it in conjunction with him, yet the government was in effect a
“ monarchy. It is true that the Romans held the name in such
“ detestation, that they would not bear the title of Dictator; but as
“ the actual direction of all state affairs was in the hands of the
“ Emperor, it was not possible for him to be, really, any other
“ than king. Every thing was ordered according to his will; but
“ that he might not appear to derive it so much from superior force,
“ as from the law of the land, every office of the greatest authority
“ under the republic, was assumed by him, with the consent of the
“ senate and people, except the dictatorship.”

The tribunate, among the rest, which was always held sacred and uncontrollable, even under the highest meridian of liberty, was now become one of the most dangerous snares. The people could not easily object to the exercise of that power, which they themselves had so often used with such unbounded licence; the Emperors therefore, and particularly Augustus, by uniting themselves with these officers in their annual elections, and becoming part of that popular body, gained whatever influence they wanted over the “ comitia,” and the commons at large, without seeming to deviate from the beaten track of the constitution⁶. Thus they very effectually put themselves beyond the reach of all legal restraint⁷, and the people became the slaves of that very institution, which was originally created to secure their liberties.

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Another more considerable advantage was gained in the tenth consulship of Augustus; when the senate took an oath to ratify all his acts, and made a decree, to “ release him from all the coercive

⁶ Grav. de Rom. Imp. 8.

⁷ Διλυται δε τῶν νόμων * * * τὰ τῶν ἀνδρῶν γράμματα ἐπὶχόρται. Dio Cass. 53. 18.

αὐτοῦ πλοῦτος ἀναγκασίας νόμοις ἴσῃ, καὶ ὅθεν τῶν

“ power

“ power of the laws, leaving him at liberty to do, or not do, what-
 “ ever was most agreeable to his own inclination *.”

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Were these words of the historian taken in the full latitude which their sense will indubitably bear, we must be led to conclude, that, from this instant, the whole government was irretrievably reduced to one comfortless and melancholy scene of despotism: that this “ Lex Regia,” as it is generally called, had, at one fatal blow, cut off every remaining branch of the antient legislature; and had left no other resource to the once free and happy subjects of this mighty empire, but to tremble and obey.

It is an irreparable misfortune to the learned world, that the historians, who treated of the events of those times, have come down to posterity in so very imperfect and mutilated a state, that nothing can be collected with certainty concerning several of the most interesting transactions; and of this, which is the subject of the present inquiry, in particular. Livy and Dionysius, both of whom flourished in the reign of Augustus, and were equally celebrated for their judgment and veracity, are more than half lost. Tacitus begins with Tiberius; most probably, because he found it unnecessary to repeat what was, thus far, related with sufficient accuracy. Suetonius, at all times concise, has hardly made any mention of it at all. So that the earliest account of this law, that can be depended upon, is to be found in Dio Cassius, who did not begin his history till above two centuries after it was supposed to have been enacted.

In the midst, therefore, of this profound silence, obscurity, or uncertainty of the cotemporary writers; where the real truth is not to be

* Όρκους ή βουλη, βεβαιωσα τας πραξεις αυτη, αυτοκρατωρ και ιαυτου και των ρωμων, παντα τι οσα εποιησατο - - - - - πασης αυτοι της των ρωμων βουλιτο ποιειν, και πανθ' οσα μη βουλοιτο, μη αναγκης απηλλαξαν, ινα - - και αυτοτελης οτως και πρατη. Dio Cass. 53. 28.

discovered, from any plain and authentic narrative of the facts now extant; our only remedy is to collect such circumstances, as seem to bear any well-founded relation to the subject, as we find them dispersed, in a very unconnected state, through a variety of authors both antient and modern; and to form such conclusions, as may be best warranted by a general review of the whole.

It has been already clearly proved, that Augustus frequently renounced all pretensions to absolute monarchy, and that the power which he exercised was limited in its duration by his own express desire, and required frequent renovations'. Great, therefore, as his influence really was, it does not appear that the Roman government was ever intended to be made *constitutionally* despotic, either under the new regulations meditated by J. Cæsar, or during the prudent and moderate administration of Octavius.

Nothing here advanced is designed, in the smallest degree, to draw a veil over the imperfections of the Roman constitution, to apologize for tyranny, or to palliate the encroachments that several, even of the best Emperors, too often made upon popular liberty: but only to convey as just an idea as possible of the principles of their government, and of the course of legislation during this important period; which, for want of duly attending to the distinction between the *civil* and *imperial* power of these princes, has not hitherto been properly understood. From hence likewise it will appear that bad men, and irregular legislatures, are not wholly incapable of framing laws that are very propitious to the common rights of nature and society¹⁰: a truth, which a noble indignation against

⁹ Βαλῆδεις δὲ καὶ ὡς ὁ Καῖσαρ πρὸς σφας ἀπαγγέλλει τὰ τῆ μοναρχικῆς φρονέει δοκίμῃ, ἡ δὲ δικαίη τῆ σφῆς τῶν δεινῶν ὁ ὑπὸ τῆ τοσούτῃ τῆ γὰρ χρόνῳ κατασκευῇ αὐτὰ ὑπὸ τῆ καὶ προσημαίνοντος,

ἔπειτα ὅτι αὐτοὶ καὶ βασιλεῖς ἡμετέροι, βασιλεῖς αὐτοὶ καὶ αὐτὰ ἀποδίδωσι. Dio Cass. 53. 12.

¹⁰ "Laudabilia multa etiam mali faciunt." Plin. Pan. 56.

despotism,

despotism, so peculiar to British hearts, will not always permit us to comprehend.

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The only way, therefore, by which we may hope to arrive at any probable knowledge of the extent of that power, supposed to be derived from this famous law, is to consider how far it was practised; to what length it was carried; and in what sense it was generally received " by those princes, who appear to have had the happiness of their people the most at heart; and to have best understood the true principles of the constitution. Acts of violence, committed by tyrants, prove nothing.

It has been already shewn, that the monarchy, as established by Romulus, was limited; that each estate of the realm had its share in the legislature; and that the power of the commons increased, in a gradual and moderate proportion, till the whole of this happy system of government was finally destroyed by Tarquin. From henceforward, both the office and title of *king* were suppressed, and for ever interdicted by an irreverfible anathema. Five centuries were not fufficient to eradicate the hereditary terror and odium which it had infpired into the whole nation.

Augustus was too wife not to fee the force of this deep-rooted averfion; and the great danger of exerting that power, which the fervile flattery of the fenate had conferred upon him, to its full extent: he, therefore, continued to fupport the antient rights of the "comitia;" and *in them* paffed many wholefome and popular laws, feveral of which are ftill extant, under the name of "Leges Juliae." Though the legislative rights of the commons, with moft other of their fundamental powers and privileges, expired with this Emperor; yet the fenate ftill retained theirs, and enjoyed, at leaft, a partial exercife of them, for many ages afterwards. We find them exprefsly

" " Si de interpretatione legis quaeratur; " ma enim est legum interpres consuetudo."
" in primis inspiciendum est quo jure civitas D. 1. 3. 37.
" retro in ejusmodi casibus usa fuisset: opti-

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recognized by a constitution of the Emperors Gratian, Valentinian, and Theodosius; with severe penalties against such as should endeavour, by clandestine means, to obtain any imperial rescript, to invalidate their authority¹². They are likewise confirmed by Justinian in his new body of laws¹³; neither were they utterly extinguished, though long reduced to shadows, till the reign of Leo the Philosopher, in the ninth century¹⁴.

The idea, therefore, of the prince being totally discharged from all legal obligation whatever¹⁵, if taken in its literal sense, will imply an intire and instantaneous subversion of the whole Roman constitution; and that every kind of power, whether legislative or executive, was transferred exclusively to him alone. But, this being directly contrary to the most certain historical testimony, the words must either be understood in a qualified sense, or they can convey no meaning at all.

The pre-eminence, which the Emperor had acquired over the rest of the people, was naturally accompanied with some imaginary excellence of person, that demanded the peculiar favor and attention of the legislature. He, in whom the whole active force of the community was vested, could not be made subject to the penal operations of the laws¹⁶, without degrading the majesty of the state

¹² "Quamvis senatusconsultum perpetuam per se obtineat firmitatem, tamen nostris legibus etiam idem prosequimur: adjicientes, ut si quisquam speciali supplicatione eliciendum aliquod rescriptum tentaverit, ut transire ei formam liceat statutorum, tertia patrimonii parte multetur, et damnatus ambitus crimine, maneat infamis." C. 1. 16.

¹³ "Non ambigitur, senatum jus facere posse." D. 1. 3. 9.

¹⁴ The constitution, which gave the final blow to this once-powerful body, bears the following title: NE AMPLIUS SENATUSCONSULTA FIANT; and then proceeds

to say; "Quemadmodum et in aliis legibus, quæ ad communem rerum usum nihil conferrent, fecimus, ut eas tanquam supervacaneas e legum corpore subduceremus: ita hic quoque facientes, eam legem quam senatus ferendarum legum potestatem facit, a legum quasi republica secerni sancimus. Nam, cum, ex quo senatoriam administrationem imperatoria majestas sibi vindicavit, inutilem illam esse judicari debeat: si cum utilibus conjungeretur, et ineptum et supervacuum esset." Nov. Leo. 78.

¹⁵ "Solutus legibus."

¹⁶ Τῆς τῶν ἡμῶν ἀναρχίας. Dio Cass. 53. 28. itself,

itself, and cutting off the hand which bore the sword for its protection. His person therefore was declared inviolable, and, according to the impious theology of those ages, he was considered as a divinity, even while on earth¹⁷; so that he could not be called to an account, by the ordinary forms of justice, for those common instances of misconduct, to which, as a man, he was equally liable with all others. He was likewise released from the observance of many ceremonial parts of the law: thus, for example, he was permitted to make his will without the strict formalities of attestation; though he could not go so far as to claim an inheritance under an imperfect will¹⁸: he could also manumit a slave, without the use of the wand¹⁹; with various other peculiar indulgences of a similar nature.

These very particular instances show, beyond doubt, that this much boasted privilege was far from being so very extensive, as the words at first view seem to imply. This may be still further illustrated by a parallel case of Pompey; who is well known to have been favored with more of these unconstitutional exemptions, both from the senate and people, than any one of the great men who lived under the republic; and that too, most frequently, at the recommendation of Cicero, the boasted champion of popular liberty. The terms in which these indulgences are couched, if construed according to their obvious meaning, infer as absolute a release from all legal coercion, as that which is the subject of our present disquisition: and yet, when their respective origin and causes are examined

¹⁷ "Præfens divus habebitur
"Augustus." Hor. Od. 3. 5. 2. are the words of the good Emperor Alexander Severus, who thus sets positive bounds to his own prerogative.
¹⁸ "Ex imperfecto testamento nec imperatorem vindicare posse, sæpe constitutum est. Licet enim Lex imperii solennibus juris imperatorem solverit, nihil tamen tam proprium imperii est, quam legibus vivere." C. 6. 23. 3. et Van Lewen in locum. These
¹⁹ "Imperator cum servum manumittit, non vindictam imponit; sed cum voluit, fit liber is, qui manumittitur, ex Legge Augusti." D. 40. 1. 14. 1.

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with a proper degree of historical accuracy, they all appear to be only so many special dispensations, occasionally passed for very particular purposes. To mention no more than one, Cicero himself speaks of this his favorite hero, in general words, as being *released from the laws*; at the instant that he applies them only to the privilege granted to him, of suing for the consulship before the legal age²⁰.

From hence it follows, that the Emperor, though considered as head of this great political body, was not independent of it; but was bound by all the laws, unless particularly excepted; and was sometimes even obliged to petition for these special exemptions. Thus Augustus obtained leave of the senate, to bequeath a larger share of his fortune to his wife Livia, than the Voconian law usually permitted²¹: which law was enacted in the last year of his life, long after he was supposed to have been made the absolute master of the constitution; and which he would hardly have condescended to ask, could he have dispensed with all laws at his pleasure. Many other instances might likewise be produced of laws, under which the Emperors were equally included with the rest of the people: but as a more particular recital would be dry and tedious, we shall refer, for further information, to several modern writers who have treated the same subject with great learning and penetration²².

If therefore the prince himself, in whose favor the "Lex Regia" was supposed to have been made, neglected to take the advantage of it; and if the wiser part of his successors always acknowledged

²⁰ "Quid tam singulare, quam ut ex senatusconsulto *legibus solutus*, consul ante fieret, quam ullum alium magistratum per leges capere licuisset." Cic. pro Le. Man.

²¹.

²² Καταλείπτο δι' αὐταῖς (sc. διαθηκαῖς) τὰ μὲν δύο μέρη τοῦ κληροῦ τῇ Τιβερίῳ, τὰ δὲ λοιπὰ τῇ

Λιβίᾳ, ὡς τινες λέγουσι. ἵνα γὰρ τι καὶ ἐκτὴς τῆς υἱίας αὐτῆς ἀπονηταί, παρὰ τῆς βουλῆς πηρσάτο, τοσοῦτοι αὐτῇ καὶ παρὰ τῶν νόμων καταλείπειν δύνῃθαι. Dio Cass. 56. 32.

²² Grav. de Rom. Imp. 27. Ger. Noodt. Obs. 1. 4. Id. de Jur. Sum. Imp. Hein. Ant. Rom. 1. 2. 66. cum multis aliis.

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the superiority of the laws; the consequence must be, that this absolute state of independence was never any avowed principle of the Roman constitution, but a mere chimera that had no existence whatever in fact.

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A few examples of laws, still extant, will set this matter beyond the reach of doubt. "It becomes so high a potentate," says Paulus, "to obey those laws from which he may *appear to be absolved*:" which words infer a supposition, that the acts of former senates had been interpreted in too general a sense; and therefore, that the prince is still bound in duty to observe the laws, however he may *appear* to have been discharged from the obligation. Thus the Emperors, Severus and Antoninus, disclaim all advantages arising to themselves from testaments made without the due forms of law; "For though," say they, "we are absolved from the laws, yet we think it our duty to live in obedience to them." But to pass over several others of the same import, the most striking of all, is that liberal and patriotic declaration of those great princes, Theodosius and Valentinian; "It is worthy the majesty of a prince, to confess himself subject to the restraint of the laws, inasmuch as they are the true basis of our own authority: and it is, in fact, more glorious for him to submit himself to their control, than to live in full possession of the sovereign power. Therefore by the oracle of this present edict, we now declare to the world, what liberties we do not think meet to allow ourselves." Words, that ought to be written in letters of gold over every throne in the universe! Though invested

²³ "Decet tantæ majestati eas servare leges, quibus ipse solutus esse videtur." D. 32. 1. 23. ²⁴ "Licet enim legibus soluti simus, at- tamen legibus vivimus." I. 2. 17. 8. ²⁵ "Digna vox est majestate regnantis, legibus alligatum se principem profiteri: adeo de auctoritate juris nostra pendet auctoritas. Et revera magis imperio est, submittere legibus principatum. Et oraculo præsentis edicti, quod nobis licere non patimur, aliis indicamus." C. 1. 14. 4.

with all the authority that a submissive people could permit them to exert, they were sensible themselves, that neither the laws of God or reason left them at liberty to follow the dictates of their own arbitrary will; but that they were obliged to direct all their endeavours to the welfare of those, from whose hands they had received so important a trust; and from whose concessions they actually derived all the power which they exercised.

Perhaps it may be objected, that the expression, "It *becomes* them to keep the laws," goes no further than to hint the duty, but not to enforce the observance; and consequently, that it was still left to the option of the prince, whether he would conform to them or not. But it is a necessary property of all laws to be peremptory; to carry with them not only a moral, but a positive, obligation; so as to impress, with a proportionable degree of guilt, every one who shall refuse an implicit obedience to their commands. Appearing therefore, as they here do, under the form of laws, they become arbitrary and binding, by their very nature, and the force of the terms. The modest and respectful language in which they are drawn, might have been designed as a special compliment to the dignity of that high personage who is meant to be the object of them: though they seem rather to have been dictated by that elegant turn of sentiment, so peculiar to the Roman writers in general, and by which the whole body of their laws, the more antient ones at least, are so eminently distinguished; especially, as we find the same decent mode of expression made use of, in laws which have no immediate or apparent relation to the prince whatever²⁵.

But be that as it may, this circumstance makes no difference in their obligatory quality; the prince being as much subject to their commands, as if they had spoken in the more rude and imperative voice of modern legislatures. From hence likewise every

²⁵ G. Noodt. Obf. 1. 4.

impartial reader will be convinced, that the *civil* government of Rome still retained many marks of its original freedom; that the subjects still continued to enjoy the benefit of their own primitive, fundamental laws, the force of which was acknowledged and submitted to by the Emperors themselves: and that the frequent outrages committed by several monsters of cruelty, with the assistance of their militia, was the despotism of man, not of the constitution.

The laws of England often speak in as high strains of the sacredness of the king's person, and of the majesty of his office, as those of Rome; and yet who would dare to affirm, that the monarchy of England was absolute? The most liberal writer upon juridical subjects, which ever yet graced this country, hath said, "That, by law, the person of the king is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary: for no jurisdiction upon earth has power to try him in a criminal way; much less to condemn him to punishment". "The king is God's vicar and minister upon earth," saith an antient oracle of English jurisprudence; "every one is under him, and he is under none but God alone". What words, if simply and literally understood, can favour stronger of a divine right of becoming a tyrant at pleasure, than these now before us? And yet has this heaven-born sovereign of ours been often opposed, and driven from his throne; else had we now not been at liberty to maintain the doctrine of resistance.

Cases of extraordinary violence, which cannot be presumed or foreseen, much less provided against, by the common rules of civil policy, will always find an occasional remedy from the dictates of self-preservation, which is the first law of nature. The Romans had

²⁷ Blackst. Comm. 1, 7.

"sub nullo, nisi tantum sub Deo." Bract.

²⁸ "Rex est vicarius et minister Dei in 1. 8.

"terra; omnis quidem sub eo est, et ipse

no positive laws for the punishing of tyrants, any more than ourselves; but they had the same abhorrence of them; the same quick feelings of their own oppressions; and thought it no treason against the "Lex Augusti," to degrade them from their office, and to take the forfeit of their lives, as pests of human society. But the principle of arbitrary power was no more imputable to the constitution of Rome, because it had the misfortune to be abused by its Nero and Domitian; than it would be to that of England, which more tamely suffered its Henry and Mary to go to their graves in peace.

With respect to the private, civil rights of the Emperor, the laws of Rome are more contrary to the *apparent* spirit of the "Lex Imperii," than even those of England. By the former, as we have already seen²⁹, the prince is supposed to be bound of course, unless particularly excepted: but by the indulgence of the laws of England, "the king is not bound by any act of parliament, unless he be named therein by special and particular words;" and yet, "he may take the benefit of any act, though he be *not* especially named"³⁰.

Why then, will it be asked, is the Roman constitution less free than the English? The truth is, that the difference does not rest so much in the principle of the laws themselves, as in the irreconcilable jealousy and discordancy between the several component parts of the Roman legislature; which prevented them from uniting their mutual endeavours, in support of the common interest. The imperial power arose gradually in the midst of the two great contending factions which divided the state, and was founded upon the wrecks of both. But the Emperors, chiefly intent upon their personal security, were not solicitous to cast the broken remains of the old constitution in a new mould; but suffered them all to lie together in a confused heap, without any effective attempt to reduce the political

²⁹ P. 352. et Grav. de Rom. Imp. 27.

³⁰ Blackst. 1. 7.

edifice once more to comeliness and symmetry. The princes acquired powers, which they thought it imprudent to exercise in their full extent; and the senate and people possessed liberties, which they dared not assert. All were legislators separately, but rarely concurred in exercising that right together. Not that this was any new inconvenience; but a radical blemish, which had subsisted in the republic, ever since the extinction of the regal government.

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This, as established by Romulus, was a free commonwealth, administered by a king; a regular body compounded of various members, each of whom discharged the particular share of duty that belonged to his respective station and department; at the same time that the public welfare was the sole point, to which all their different exertions were directed. In short, it was a limited monarchy, founded (without disparagement be it spoken) upon a principle very similar to our own. But, upon the introduction of the democracy, the bond of union was greatly relaxed. The several constituent parts of the state, having often very opposite interests to pursue, became too much detached from, and independent of, each other. Instead of being animated with one soul, and joined together, as before, in framing one uniform system of laws, which, by their combined influence, should give life and strength to the whole, they were generally fomenting mutual jealousies; caballing against each other's power; and endeavouring, by partial laws, to lessen each other's consequence.

These mischiefs naturally resulted from the neglecting to make a proper distinction between the joint acts of the whole community, and the particular acts of the senate and commons. By allowing to both, in their turns, the same weight and authority, each became equal to the whole; which was the greatest of all political absurdities. By degrees likewise the several magistrates, originally no more than merely ministerial and executive officers; and even the ad-

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vocates, who were no other than interpreters and commentators; set up their own decrees and opinions, and became legislators among the rest. This still added to the general confusion, and made the commonwealth a many-armed monster, vigorous and formidable enough in his appearance, but feeble in his action, and embarrassed in his operations. The imperial office was a very inadequate remedy for such fundamental defects. The senate and people, too weak to resist the prince, but unwilling to make him absolute sovereign at once, conferred upon him certain occasional powers to make laws, still reserving a considerable share to themselves; so that the old inconvenience yet remained, of a variety of co-ordinate legislative powers in the same state; each of which continued to exercise a distinct right of legislation independent of the others.

The very conspicuous character under which the Emperor now appeared, easily prevailed over the fears of a degenerate people, to compliment him with some new and extraordinary privileges. But these were not bestowed with so lavish a hand, as is generally supposed. A late learned civilian¹¹ has clearly shewn, that the famous passage from Dio Cassius, already quoted¹², which has been usually considered as the foundation of the "Lex Regia," referred only to an act of the senate, discharging Augustus from the restrictions of the Cincian law, which prohibited any largesse to the people, beyond a certain value¹³; and as the Emperor, lately recovered from an illness, was desirous of extending his generosity, but was prevented by the law, as it then stood, the senate released him from it, and left him at liberty to act therein as he should think proper.

Two other decrees were made very shortly afterwards, to qualify Marcellus and Tiberius for magistracies before the legal age: from

¹¹ G. Noodt. *Diff. de Jure Summi Imp.* p. 777.

¹² P. 121.

¹³ "Lex Cincia supra certum modum donari prohibet, exceptis quibus cogatis." Ulp. *Frag.* 1. 1.

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whence it evidently follows, that the favors thus conferred were partial, and confined only to those objects for which they were granted: for if, by this single act, he had been discharged at once from all further observance of law whatsoever, these particular dispensations would have been unnecessary. The same may be said of some additional honors decreed to him, in like manner, the year following; as that, among many others, of being perpetual tribune. And yet, after all these important concessions, which carry no appearance of having proceeded from any principle of adulation, the historian adds, that Augustus still behaved to the senate as a free body³⁴: in proof whereof, when certain ambassadors from Phraates, king of Parthia, came to Rome to submit their controversies to his decision, he introduced them into the presence of the fathers, and received a special commission from them to terminate the disputes.

Again, four years after this, the same supreme body voted him several new powers; and, among the rest, that he might make what alterations, or pass what laws he pleased, to bear his own name; and offered to bind themselves by oath to observe them: but this latter part of the compliment he wisely declined; well knowing that, if they were sincere, no oath would be necessary, if not, that none would be binding³⁵. Whatever, therefore, the historian himself might have imagined, or others may have conceived, either from his misrepresentations, or their own misunderstandings, the above facts alone are sufficient to prove, that Augustus was absolved from no other laws, but such as were expressly specified by the senate; and that by

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³⁴ Και μοι δοκεῖ ταυτ' ὅτι τότε οὐκ ἐκ κολακείας, ἀλλ' ἐκ ἀληθείας τιμῆς, λαβὼν. τὰ τι γὰρ ἀλλὰ ὡς δεινὸς σφίσι προσέφερετο. Dio Cass. 53. 33.

³⁵ Διοδοῖ τι πάντα αὐτὰ καὶ νομοθετεῖ ὅσα βούλετο κτίζουσι καὶ τοὺς τι νόμους τοὺς γραφεσμένους ὑπ' αὐτοῦ, Αὐγούστου ἐκείνου ἢ πρὸς προσηγορίαν,

καὶ ἡμεῖς σφίσι ὁμοσεύει ἡδὺλον. ὁ δὲ τὰ μὲν ἀλλὰ ὡς αὐτὴ καὶ ἀναγκαῖα ἰδέσθαι, τοὺς δ' ὅρκους ἀφίκεται αὐτοῖς. καὶ γὰρ ἐν ᾗ, ὅτι ἐν μὲν ἀπὸ τῆς γνώμης τι ψευδίζονται, ταρυσσὲν αὐτοῦ, καὶ μὴ ὁμολογήσασθαι· ἐν δὲ μὴ, οὐδὲν αὐτοῦ καὶ μὴ μὴ πείσας ἐπαγαγῶσι προξενήσουσιν. Id. ib. 54. 10.

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all others he was equally bound with the rest of his fellow-citizens. And what is here said of him is not less applicable to his successors.

The tribunes had not yet intirely lost their antient prerogative of convoking the senate, though the same had likewise been granted to Augustus³⁶. Tiberius, therefore, in his first affected fit of moderation, caused it to be summoned by the same primitive authority, in order to notify his accession³⁷: and when this base crew of sycophants urged his acceptance of the same honors which had been enjoyed by his predecessor, he declined many of them³⁸; pretending a desire to leave the administration of government, for the present, in the hands of the constitutional magistrates³⁹. He acted this farce with the most consummate policy and hypocrisy, during the life of Germanicus; but that restraint being once removed, he could contain no longer, and broke out gradually into every excess of vice and brutality⁴⁰.

But the innumerable acts of tyranny and violence committed by him, and several of his no less infamous successors, are no proofs of any legal right on their parts; on the contrary, it is certainly true, that they generally shared the same fate with their authors; being rescinded with every mark of detestation, where-with a people so justly incensed could possibly brand them: and the senate, upon the inauguration of every new Emperor, still main-

³⁶ Ὡς τε καὶ τὴν βουλὴν ἀδριζέτω ὅσακις αὐτὸς ἐθελήσῃ. Dio Cass. 54. 3.

³⁷ "Jure tribunitiæ potestatis coacto senatu." Suet. in Tib. 23.

³⁸ "Ex plurimis maximisque honoribus, præter paucos et modicos non recepit." Id. ib. 26.

³⁹ Tiberius cuncta per consules incipiebat, tanquam vetere rep. et ambiguus imperandi. Ne edictum quidem, quo patres in curiam vocabat, nisi tribunitiæ potestatis præscriptione posuit, sub Augusto ac-

"ceptæ." Tac. Ann. 1. 7.

⁴⁰ Ταὶς δ' οὕτω πάντα μέχρι γὰρ καὶ ὁ Γερμανικὸς ἐξὲν ἐποιεῖ· μὲτα γὰρ ταῦτο συχρὰ αὐτῶν μεταβάλλει, οὐδ' οὐ φρονεῖ μὲν οὕτως ἀπο πρώτης, ὡς ὕστερον διδιδίξαι, πλάσσει μὲν δὲ εἰς ὅσον ἐκείνος εἶπεν, ἐπιβήτωρ ἐφιδρινοῦσα αὐτὸν τῇ ἡγεμονίᾳ ἰωρᾷ· οὕτω καὶ φεβυκῶς μὲν τοῦ, ἐξοικίλας δ' ὅτι τὴν ἀπαγωγὴν ἐγερθεῖ. Dio Cass. 57. 13. And again, Τιβέριος δὲ, ἐπεὶ τοῦ ἐφιδρινοῦσιν οὐκ αὐτὸς εἶχεν, εἰς πάντας τοὺς αὐτοῦ πρὸς τὴν ἐργασίαν αὐτῶν, πολλὰν οὕτως καὶ καλῶς, περιεστῆκε· ταῦτα γὰρ ἀλλὰ ἀγριῶς ἤρξε. Id. ib. 19.

tained

tained their own right of renewing the privileges formerly conferred upon his predecessors; and of extending them from time to time, as they thought most expedient for the support of the Imperial dignity: so that, great as the power really was, it still continued, in point of law, dependent upon the will of the senate; though that will was too often kept in subjection by the terrors of military force.

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The policy of the senate and people, upon the accession of Vespasian, will set this matter in the most clear and satisfactory point of view imaginable. They immediately decreed him every honour usually granted to former princes⁴¹. But that he might not interpret these concessions into an indefinite enlargement of the Imperial prerogative, they very wisely enumerated them all, one by one; specifying the laws from which he should be released, and the rights he should be at liberty to claim: the general interest of the commonwealth being pointed out, in express words, as the standard whereby he was to regulate his behaviour, in the future exercise of these important powers.

From the valuable fragment of antiquity, whereon these remarks are founded, and to which we have formerly alluded⁴²; we are well
authorised

⁴¹ V. p. 270.

⁴² V. p. 270. It was our first design, as will appear from Note 66 of the same page, to have omitted the repetition of this fragment, it having been so frequently given in other modern publications. But as those works may not happen to fall into the hands

of the generality of our readers, we shall hope that the convenience of placing the authority itself immediately before their eyes, will be a sufficient apology for inserting it, as copied from Gruter's *Inscriptiones*, p. 242, where it stands, with the following title:

TABULA ÆNEA, in Basilica Lateranensi, alta palmos ix, lata palmos v, digitos tres crassa, partem facultatum Imperatori Cæsari Vespasiano Augusto, a *Senatu Populoque Rom.* per legem concessarum, continens.

FOEDUSVE. CUM. QUIBUS. VOLET. FACERE. LICEAT. ITA. UTI. LICUIT. DIVO. AUG. TI. JULIO. CÆSARI. AUG. TIBERIOQUE. CLAUDIO. CÆSARI. AUG. GERMANICO. UTIQUE. EI. SENATUM. HABERE. RELATIONEM. FACERE. REMITTERE. SENATUS CONSULTA. PER. RELATIONEM. DISCESSIONEMQUE. FACERE. LICEAT ITA. UTI. LICUIT. DIVO. AUG. TI. JULIO. CÆSARI. AUG. TI. CLAUDIO. CÆSARI AUG. GERMANICO.

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authorised to affirm, that, notwithstanding the predominancy of a monarchical form of government in the persons of the Cæsars, the senate at least, if not the people, still preserved an actual superiority, and a distinct power of their own; of which they gave the most substantial proofs, by imparting to each Emperor respectively, such privileges, and such only, as they, in their own discretion, thought expedient: that these favors were not hereditary, but personal: that they were different to different princes: and that out of the nine

UTIQUE. CUM. EX. VOLUNTATE. AUCTORITATEVE. JUSSU. MANDATUVE. EJUS
PRÆSENTEVE. EO. SENATUS. HABEBITUR. OMNIUM. RERUM. JUS. PERINDE
HABEATUR. SERVETUR. AC. SI. E. LEGE. SENATUS. EDICTUS. ESSET. HABERETURQUE;

UTIQUE. QUOS. MAGISTRATUM. POTESTATEM. IMPERIUM. CURATIONEMVE
CUJUS. REI. PETENTES. SENATUI. POPULOQUE. ROMANO. COMMENDAVERIT
QUIBUSQUE. SUFFRAGATIONEM. SUAM. DEDERIT. PROMISERIT. EORUM
COMITIIS. QUIBUSQUE. EXTRA. ORDINEM. RATIO. HABEATUR.

UTIQUE. EI. FINES. POMERII. PROFERRE. PROMOVERE. CUM. EX. REPUBLICA
CENSEBIT. ESSE. LICEAT. ITA. UTI. LICUIT. TI. CLAUDIO. CÆSARI. AUG.
GERMANICO.

UTIQUE. QUÆCUNQUE. EX. USU. REIPUBLICÆ. MAJESTATE. DIVINARUM
HUMANARUM. PUBLICARUM. PRIVATARUMQUE. RERUM. ESSE
CENSEBIT. EI. AGERE. FACERE. JUS. POTESTASQUE. SIT. ITA. UTI. DIVO. AUG
TIBERIOQUE. JULIO. CÆSARI. AUG. TIBERIOQUE. CLAUDIO. CÆSARI
AUG. GERMANICO. FUIT.

UTIQUE. QUIBUS. LEGIBUS. PLEBEIVE. SCITIS. SCRIPTUM. FUIT. NE. DIVUS. AUG
TIBERIUSVE. JULIUS. CÆSAR. AUG. TIBERIUSQUE. CLAUDIUS. CÆSAR. AUG
GERMANICUS. TENERENTUR. IIS. LEGIBUS. PLEBISQUE. SCITIS. IMP. CÆSAR
VESPASIANUS. SOLUTUS. SIT. QUÆQUE. EX. QUÆQUE. LEGE. ROGATIONE
DIVUM. AUG. TIBERIUMVE. JULIUM. CÆSAREM. AUG. TIBERIUMVE
CLAUDIUM. CÆSAREM. AUG. GERMANICUM. FACERE. OPORTUIT.
EA. OMNIA. IMP. CÆSARI. VESPASIANO. AUG. FACERE. LICEAT.

UTIQUE. QUÆCUNQUE. ANTE. HANC. LEGEM. ROGATAM. ACTA. GESTA
DECRETA. IMPERATA. AB. IMPERATORE. CÆSARE. VESPASIANO. AUG
JUSSU. MANDATUVE. EJUS. A. QUOQUE. SUNT. EA. PERINDE. JUSTA. RATAQUE
SINT. AC. SI. POPULI. PLEBISVE. JUSSU. ACTA. ESSENT.

S A N C T I O.

SI. QUIS. HUIUSCE. LEGIS. ERGO. ADVERSUS. LEGES. ROGATIONES. PLEBISVE. SCITA
SENATUSVE. CONSULTA. FECIT. FECERIT. SIVE. QUOD. EUM. EX. LEGE. ROGATIONEVE
PLEBISVESCITO. S. VE. C. FACERE. OPORTEBIT. NON. FECERIT. HUIUS. LEGIS
ERGO. ID. EI. NE. FRAUDI. ESTO. NEVE. QUIT. OB. EAM. REM. POPULO. DARE. DEBETO.
NEVE. CUI. DE. EA. RE. ACTIO. NEVE. JUDICATIO. ESTO. NEVE. QUIS. DE. EA. RE. APUD.
SE. AGI. SINITO.

predecessors of Vespasian, no more than Julius Cæsar, Augustus, Tiberius, and Claudius, are recited in that decree, as having been the objects of any special indulgences whatever.

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From the same premises it may likewise be concluded, that the four emperors just mentioned, how much soever they might have occasionally exceeded the due limits of their power, did not go so far as utterly to annihilate the other constituent parts of the commonwealth; but that they still existed, and were occasionally called forth, to strengthen the hands, and increase the authority of those, who were supposed to have been their absolute masters. It is likewise further observable, that the names of Caligula, Nero, Galba, Otho, and Vitellius, are passed over in silence; which may possibly be owing to their extreme tyranny, to the violent struggles between them for empire, or to the shortness of their lives; all which causes either totally superseded, or left no time for, the regular operations of the other legislative powers of the state.

The learned civilian of our own country, who has also copied the same fragment⁴³, supposes that it is described in other parts of the civil law, under the several characters of "Lex Imperii"⁴⁴, "Augustum Privilegium"⁴⁵, and "Lex Augusti"⁴⁶: though it is evident, from the titles themselves, that the first of these refers to certain laws made in the time of Augustus, called "Leges Julix et Papix," which favored the pretensions of the exchequer, in the case of want of heirs; and which Justinian himself here limits in the strictest manner against the crown. The second is a rescript of the Emperor Alexander, renouncing his right to any claim under an imperfect testament: and the third concerns only the manumission of slaves, without the observance of the ordinary formalities: but none of them can be used in support of that great latitude of power, commonly deduced from the law now in question.

⁴³ Taylor, p. 238.

⁴⁴ C. 6. 23. 3.

⁴⁵ C. 6. 51. 1. 14.

⁴⁶ D. 40. 1. 14.

Under the foregoing view, therefore, the "Lex Regia" was not a law by which any new kingdom was erected, or a king created; but such a one only, whereby unlimited power was granted to particular princes, in particular cases; and, in this sense, does not apply to Augustus alone, but even to many other noble and excellent personages, in the purest times of republican liberty.

The case was much the same with regard to the Dictator, who was a complete monarch for the time; who even suspended every magistrate and public officer, the tribunes of the people alone excepted⁴⁷; and, according to the general idea entertained of the office, was totally discharged from all legal coercion. But, if we suppose that he was left at full liberty to invade the rights of private property, or to commit any other acts of oppression which his passions might suggest, in the wanton moments of unbounded power; his nomination could never have proceeded from the deliberate choice of a sober people, attentive to their own preservation, but from the frantic ravings of a despairing multitude. He was therefore no further absolute, than was necessary to strengthen his hands for the public service. If the end of that was, to repel an invasion, to quell a sedition, or to prevent any other impending evil, he was immediately invested with such powers, as were competent to the occasion for which he was created. He might set up his standard in what field he pleased, and command all persons capable of bearing arms to repair to it instantly. He might send them upon any expeditions, however dangerous; might lay them under any system of discipline, however hard or laborious; and all this under whatever penalties he thought proper to inflict, even to the forfeiture of their lives; without being himself liable to be called to account for his conduct at the expiration of his time. But it is no where to be found, that he could repeal the fundamental laws of the constitution,

⁴⁷ Ἡ δημαρχία διαμνῆσι, τὰς δὲ ἄλλας καταλύσει πάσαις, διαβιβάζει αἰρετικούς. Plut. in Ant. p. 73.

or make any other alteration in the civil policy of the state, which did not bear an immediate relation to the design of his appointment.

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Upon the whole, after the most mature consideration of the preceding subject, it will not be going too far to affirm, that the several princes, whose political characters we have endeavoured to represent in their true light, without favor or prejudice, were never acknowledged by their respective electors and constituents for such absolute monarchs, as we, in these later times, suppose them to have been. Their immunities and prerogatives, though indubitably great and formidable, were, nevertheless, of a very special nature; and, according to the legal idea of *privileges*, could not be justly extended beyond the line within which they were originally circumscribed; but, upon the well-known rule of common sense, no less than of law, required a strict conformity and obedience to the general laws of the state, in all other cases in which they were not particularly excepted ⁴⁷.

It would be absurd to conceive, that so long a train of princes, of such opposite characters, would have condescended to acknowledge a dependence upon the senate, or to accept these frequent renewals of their power, could they have demanded them on their accession, as the established rights of the imperial office; or had they been declared absolute, by any avowed and fundamental law of the constitution. Even the most tyrannical among them, in the cooler moments of reflexion, paid an outward deference to the superior authority of the fathers: while those of milder dispositions so well understood the nature of their power, as much oftener to decline what was offered, than to exceed the just limits of what they possessed.

Though the celebrated facts, from whence the principle of what is called the "Lex Regia" was afterwards derived, seem to have found

⁴⁷ "Exceptio confirmat regulam in non exceptis."

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their way, for the first time, into the writings of the Roman lawyers and historians, under the reign of Alexander Severus; yet it is particularly worthy of observation, that the prince himself gave no countenance to any such unpopular doctrines; but that he declined the title of *Lord*⁴³, as carrying with it too high a degree of superiority; and, in the humility and moderation of his heart, confined himself to that of *Emperor*, as of a more private and limited import. That, having once accepted the grant of many more prerogatives, than had ever been conferred upon any of his predecessors in the space of a single day, the senate was obliged to justify this unconstitutional violation of an established custom, by the pretence of being driven to it by very special considerations.

The most, therefore, that can justly be implied in the idea of this famous law, is only this; that, when the republican form of government began to decline, and, from many natural causes, could no longer exist in its primitive shape; the necessity of the times required some one supreme magistrate, to give vigor and activity to the laws, and to be the general minister for the advantage of the whole. To enable him to discharge these duties with better effect, it was requisite for the people, or legislative body, of whomsoever that was composed, to fortify him from time to time with certain peculiar privileges; which he was to enjoy, either for life or a term of years, under the limitations particularly specified. But these powers were both derivative and temporary. As they originated from the consent of the body at large, so they reverted to it upon every demise of the prince; and upon a new election were regranted, under whatever restrictions the permanent ruling power thought most expedient. In a course of years, indeed, as the antient spirit of the constitution declined, the prince, by the aid of his military force, gained a complete ascendancy over all the other branches; and assumed an unreasonable share of the legislation into his own hands; under which an intimi-

⁴³ "Dominus." V. p. 336.

dated and desponding people were at length forced to acquiesce, merely for want of courage or ability to resist.

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This was the unhappy crisis to which the people were actually reduced in a few more centuries; when the antient glory of the Roman name was extinguished by the division of the empire, and the seat of it transferred to another region; where the servile temper of the Greeks made every thing lawful, which a resolute or tyrannical monarch dared to injoin.

Justinian therefore, or rather Tribonian the compiler of the Digest, taking advantage of the several detached laws, which confirmed the supreme power of the Emperor in various particular instances; and either misunderstanding, or, more probably, misrepresenting, some opinions of Ulpian; contrived, out of the whole, to set up this doctrine of the regal and absolute power of the Emperor, which, till this time, was never the language of the Roman laws; though it became, from henceforward, a constitutional principle of legislation, from the tame submission of a corrupt people⁴⁹, grown basely indifferent to the glorious freedom of their bold and sturdy ancestors.

lit

C H A P. VII.

Council or Consistory of the Emperors.—Rescripts.—Decrees.—Edicts.

FROM the foregoing view of the state of the Roman government, under the princes of the two first centuries after the decline of the republic, we learn, that the Imperial office was of a very complicated nature; including a variety of powers, both military and civil. That the former were more peculiarly and

Council or
consistory of
the Empe-
ror.

⁴⁹ Noodt. ut sup. Grav. de Rom. Imp. 23—27.

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independently his own, under the character of *Emperor*: but that he exercised the latter under many different and inferior titles; and with an *apparent* subordination to the established principles of the constitution. That the senate, and sometimes the people, still preserved the shew of being free agents, though, in fact, they were mere instruments to give a more legal color to the acts of the prince; who was generally in a condition to enforce obedience, whether they chose to pay it or not.

Common prudence, however, suggested to him the more moderate way of seeming to act by the advice of his council; which, indeed, was no more than what the multifarious business of such a vast empire made necessary. Augustus, when placed at the head of it, soon found that he stood in need of a great deal of official assistance: all matters therefore of a public nature, as of receiving ambassadors, returning answers to foreign kings, and such other transactions, wherein the majesty of the state was publicly concerned, he reserved to the senate at large. But, to save them the trouble of assembling upon more private occasions, he established a cabinet council¹, composed of the consuls, of several other chief magistrates, and of a certain number of senators, chosen by lot, who were not obliged to attendance for more than six months at once; and with these he consulted upon such business, as he meant afterwards to refer to the judgment of the whole body.²

Towards the end of his life, being then far advanced in years, and unable to attend the frequent meetings of the senate, instead of fifteen senators for six months, he obtained an appointment of

¹ Grav. de Rom. Imp. 17.

² "Quo autem lecti probatique et religiosius et minore molestia senatoria munera fungerentur, sanxit,—ne plusquam bis in mense legitimus senatus ageretur, kalendaris et idibus: neve Septembri Octo-

"brive mense ullos adesse alios necesse esset, quam forte ductos, per quorum numerum decreta confici possent: sibi que instituit consilia sortiri semestria, cum quibus de negotiis ad frequentem senatum referendis ante tractaret." Suet. in Aug. 35.

twenty for twelve months; who, together with certain other magistrates, were to compose a kind of legislative body; and it was decreed, that all their acts should be as valid, as if ratified by a full senate³.

The utility of this institution being so generally acknowledged, it was continued by other succeeding princes, under the name of the *Consistory*; being supplied by several of the officers of state, the most respectable of the patricians, and the most eminent professors of the law; by whose advice many great improvements were made in the legal system. To his particular friends and favorites, Tiberius obtained an addition of twenty principal senators⁴; though most of these soon fell a sacrifice to the cruelty of this capricious tyrant, and, among the rest, the infamous Sejanus.

From the foregoing passages it should seem, that the power of choosing the members of this body, was not intirely vested in the Emperors; but that they *requested* it⁵ of the senate, who, at least, confirmed the choice, and gave a sanction to their acts: consequently, that the authority thus exercised by them of making laws, or other decrees, was not derived from any general pre existing right; but from the special favor of the great standing council of the whole nation, as it happened to be solicited from time to time⁶. Neither is it clear from history, whether this privy-council, though often heard of, ever made any regular or permanent part of the constitution.

³ Και συμβούλους, ὑπο τῆ γῆρας (ὅφ' ὕπερ οὐδε
εἰς το βουλευτηρίον εἶσι, πληρὸν σπανιωτάτα, συνεφοῖτα)
ἡκοσιν ἐτησίους ἤθησαντο. πρῶτον. γὰρ καὶ ἱκοί
μὴν πιντικαίδεκα προσετίθητο, καὶ προσετίθησαν, ὅτι
πάντα ὅσα αὐτῶ μετὰ τῆ Τιβερίου, καὶ μετ'
ἐκείνου, &c.—βουλευομένη δόξη, κυρία, εἰς καὶ πάση
τῇ γῆρασι ἀριστάτα, ἰσχύει. Dio Cass. 56. 28.

⁴ “Super veteres amicos ac familiares,
“viginti sibi e numero principum civitatis
“deposcerat, velut consiliarios in negotiis
“publicis. Horum omnium vix duos aut
“tres incolumes præstitit: cæteros, alium alia

“de causa perculit Inter quos, cum pluri-
“morum clade, Ælium Sejanum.” Suet.
in Tib. 55. Jos. Ant. Jud. 18. 7. 6.

⁵ ἤθησαντο, says Dio Cassius, of Augustus;
deposcerat, says Suetonius of Tiberius;
both which words mean, to solicit any thing
as a matter of favor.

⁶ Grav. de Rom. Imp. 17.

This is expressly said of Adrian, who
chose his own council, “Quos tamen senatus
“omnes probasset.” Spart. in Adr. 18.

Some of the more tyrannical princes might, perhaps, occasionally have had recourse to it, to justify their oppressive measures, or to assist them in cases of difficulty; and at other times have laid it aside, as being a check upon their own arbitrary projects. The reigns of some others were so very short, that before they were well seated in their thrones, they were removed; and, consequently, could have had no leisure to attend to any political concerns at all. But it is most probable, that the good princes gladly availed themselves of so useful a practice; which not only secured their authority by this more intimate union with the state; but likewise greatly alleviated the fatigues of government, and added weight to their legislative acts.

Adrian was particularly attentive to this institution, and shewed his sense of its utility, by selecting the most worthy senators as assessors to himself in his judicial capacity⁷: and, by the time of his reign, it seems to have been grown into an established custom, for the Emperor, when he took cognizance of causes, to assemble not only the senators, but the knights, together with the other public magistrates, and professors of the law, and to deliver his opinion in the presence of them all⁸.

The same example was very carefully followed by Antoninus Pius⁹, and several other of his worthy successors. Marcus Aurelius paid so great a deference to the judgment of his council, that he never undertook any matter of consequence without their advice; and used frequently to say, "It was much more equitable that he

⁷ "Optimos quosque de senatu in contubernium Imperatoris majestatis adscivit." Spart. in Adr. 8.

⁸ "Erat tunc mos, ut, cum princeps causas cognosceret, et senatores et equites Romanos in consilium vocaret, sententiam ex omnium deliberatione proferret." Id. ib. "Cum judicaret, in consilio habuit non amicos suos aut comites solum, sed jurisconsultos; et precipue Julium Celsum,

"Salvium Julianum, Neratium Priscum, aliosque." Ib. 18. "Causas Romæ atque in provinciis frequenter audivit; adhibitis consilio suo Consulibus atque Prætoribus et optimis senatoribus." Ib. 22.

⁹ "Multa de jure sanxit: ususque est jurisperitis, Vinidius Vero, Salvo Valente, Volusio Metiano, Ulpio Marcello, et Javoleno." Jul. Cap. in Ant. Pio, 12.

" should be directed by the counsel of such friends, than that such and
 " so many should be governed by his will and pleasure alone !"¹⁰ C H A P:
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Septimius Severus, as we have already seen, though not a good, was certainly a great, prince; and shewed high respect to all those eminent persons, who were the best qualified to advise him in the important art of legislation. Alexander Severus followed the same laudable example; having an established council, in whose presence all matters of moment were discussed, before they were referred to him for his final decision; the chief among whom was the famous Ulpian¹¹: and, in consideration of their being constantly about the person of the prince, they were exempted from all burdensome offices; and further honored with many high privileges¹².

Thus supported, the Emperor became the first legislative character of the state; and as " Princeps Senatus," or speaker of that august house, it was his peculiar business to propose laws to the fathers, in a manner very similar to the antient form of " Rogatio ad Populum," in the days of the republic. These laws were all received and obeyed as so many oracles: and, in later times, it was considered as a kind of sacrilege, even to call in question the judgment of the prince¹⁴. They are known by the general title of Im-

¹⁰ "Semper sane cum optimatibus, non solum bellicas res, sed etiam civiles, priusquam faceret aliquid contulit. Denique sententia illius præcipua semper hæc fuit; æquius est, ut ego tot et talium amicorum consilium sequar, quam ut tot et tales amici meam unius voluntatem sequantur." Jul. Cap. in M. Aur. 22.

¹¹ "Negotia et causas prius a scriniorum principibus, et doctissimis jurisperitis et fidei fidelibus, quorum primus tunc Ulpianus fuit, tractari ordinarique, atque ita referri ad se præcepit." Æl. Lamp. in Al. Sev. 15. "Fuit præterea illi consuetudo, ut si de jure aut de negotiis tractaret, solos doctos et disertos adhiberet." Id. ib. 16.

¹² Thus in a rescript, he directs, "Secundum responsum Domitii Ulpiani—juris consulti amici mei." C. 8. 38. 4.

¹³ Thus says Papinian; "Jurisperitos, qui tutelam gerere cæperunt, in consilium principum assumptos, Optimi Maximize Principes nostri constituerunt excusandos." D. 27. 1. 30. pr. v. et. D. 4. 4. 11. 2.

¹⁴ Grav. de Rom. Imp. 21.

¹⁵ Thus say the Emperors Gratian, Valentinian, and Theodosius, who were yet generally esteemed as good princes; "Disputare de principali judicio non oportet: sacrilegii enim instar est dubitare, an is dignus sit, quem Princeps elegerit." C. 9. 29. 3.

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perial Constitutions, and were usually enacted and promulgated in the three following ways¹⁵.

Rescripts.

1. By *Rescript*, "quod per epistolam constituit¹⁶;" which he ordained by his letter, to any governor or judge of a distant province, or court, who desired to take his opinion upon some point of law, which was difficult or ambiguous. Such cases were likewise often stated and presented to him by the parties themselves, in petitions, usually called "*Libelli Supplices*;" a practice introduced by Julius Cæsar¹⁷, and continued by Augustus and most of his successors, in order to obviate the inconvenience of being taken by surprize, and of being obliged to answer questions without mature deliberation¹⁸. The Emperor, therefore, having considered the case either alone, or, more frequently, in conjunction with his council, delivered or sent back his sentiments in writing; which became law for the future, either generally or specially, according to the particular nature of the matter in issue¹⁹.

2. The

¹⁵ "Quodcunque Imperator per epistolam constituit, vel cognoscens decrevit, vel edicto præcepit, legem esset constat." I. 1. 2. 6. And again, somewhat more particularly, "Quodcunque igitur Imperator per epistolam et subscriptionem statuit, vel cognoscens decrevit, vel de plano interlocutus est, vel edicto præcepit, legem esse constat; hæc sunt quas vulgo Constitutiones appellamus." D. 1. 4. 1. 1.

¹⁶ Grav. O. J. 1. 123, 124.

¹⁷ Λέγεται δὲ καὶ τὸ διὰ γραμμάτων τοῖς φίλοις ὁμιλεῖν, Καίσαρ πρῶτος μηχανήσασθαι, τὴν κατὰ πρόσωπον ἐντεύξει ὑπὲρ τῶν ἐπιγογγῶν, τὴν καὶ διὰ τὴν πολλὰς ἀσχυρίων, καὶ τῆς πόλεως τὸ μαγνὸς μὴ σπριμνέσθαι. Plut. in Jul. Cæs. p. 118.

¹⁸ "Sermones quoque cum singulis, — graviores, non nisi in scriptis, et e libello habebat: ne plus minusve loqueretur ex tempore." Suet. in Aug. 84. And again, "Sejanus — componit ad (Tiberium)

Cæsarem codicillos. Moris quippe tum erat, quanquam præsentem, scripto adire." Tac. Ann. 4. 39.

¹⁹ The effect and extent of the Imperial laws are thus very particularly described by the Emperors Theodosius and Valentinian, in the following address to the senate; "Leges ut generales ab omnibus æquabiliter in posterum observentur, quæ vel missæ a nobis ad venerabilem cœtum oratione conduntur, vel inserto *edicti* vocabulo nuncupantur: sive eas nobis spontaneus motus ingesserit, sive precatio, sive relatio, vel lis mota legis occasionem postulaverit. Nam satis est *edicti* eas nuncupatione censer, vel per omnes populos judicam promulgari: vel expressius continere, Quod principes censuerint ea, quæ in certis negotiis statuta sunt, similium quoque causarum fata componere. Sed et & Generalis Lex vocata est, vel ad om-

" nec

2. The second method was by *Decree*, "*Quod cognoscens decrevit*:" i. e. a sentence passed by the Emperor himself, upon a public hearing of a cause in a court of justice; where several of these princes, as is well known, used to sit in person, assisted by lawyers, as our English monarchs did of old in the King's Bench. These Decrees were collected, about the beginning of the third century, into six books, by Julius Paulus, intitled "*Libri Receptarum Sententiarum*," of which five only are now extant²⁰.

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Decrees.

3. The last was by *Edict*, "*Quod Edicto præcepit*;" i. e. mere voluntary constitutions, enacted and published for some general purposes, as occasion required; they became therefore universal law, under the general name of "*Lex Edictalis*". The word *Edict*, however, is likewise a generical term, including every one of the foregoing species; and is often understood in that larger sense, in various parts of the "*Corpus Juris Civilis*."

Edicts.

Such were the chief modes of enacting the Imperial laws, and such the general course of legislation during the present period: and though the power from whence these laws originated was, in effect, absolute, yet many of them do high honor to their authors.

No rule of succession having ever been established for supplying the vacant throne, it was open to the competition of every great man in the empire, who had either interest or merit sufficient to support his pretensions; consequently, out of so large a field, real virtue had a fair chance of being sometimes distinguished; and, in fact, often received its due reward. The private and even humble stations, in which se-

²⁰ *res jussa est pertinere, vim obtineat edicti:* "nentibus." C. 1. 14. 3.

interlocutionibus, quas in uno negotio ²¹ Grav. O. J. 1. 122.

judicantes protulimus, vel postea profere- These are to be found in most editions of
mus, non in commune præjudicantibus: the "*Corpus Juris Civilis*."

nec his, quæ specialiter quibusdam concessa ²² "*Hac edictali lege in perpetuum vali-*

sunt civitatibus, vel provinciis, vel corpo- tura sancimus, &c." C. 5. 9. 6. pr.

ribus, ad generalitatis observantiam perti- Grav. O. J. 1. 120.

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veral of these princes were born; the virtuous and philosophic course of education in which they had been early trained up; had fortified their hearts against the corruption of courts, and the fascinations of power; and having duly instructed them in the rights of subjects, gave them just and moderate ideas of the duties of sovereigns. Hence, their laws, not less than their memories, are become immortal; and are received by all civilized nations of later ages, not merely as private, municipal obligations, but as principles of universal justice.

On the other hand, as the characters of these princes often varied, the complexion of the laws changed with them. Many of their institutions are justly chargeable with partiality; for which reason some very eminent lawyers, Paulus in particular, doubted of their authority, unless they had been received and confirmed by long usage²². The Emperor Macrinus likewise, who bore the character of an expert lawyer, expressed a design of abolishing the rescripts of his predecessors; thinking it an indignity to the Roman legislature, that the arbitrary will of such ignorant princes as Commodus and Caracalla should be honored with the name of law, when even Trajan himself never chose to give answers to petitions of this nature, lest what should be thus granted as a special favor, should be extended to other cases²³.—Thus will the force of truth, and sense of propriety, often strike even the most obdurate tyrants.

The great and wise Constantine was conscious of the same radical defects of these laws, which were made only for private and parti-

²² Grav. de Rom. Imp. 20.

²³ “Fuit in jure non incallidus, adeo ut
“statuisset omnia rescripta veterum princi-
“pum tollere, ut jure, non rescriptis age-
“retur, nefas esse dicens, leges videri Com-
“modi et Caracallæ, et hominum imperi-

“torum voluntates, cum Trajanus nun-
“quam libellis responderit, ne ad alias
“causas facta præferrentur, quæ ad gratiam
“composita viderentur.” Jul. Cap. in
Macr. 13.

cular purposes; and therefore ordained, that rescripts, however obtained, should be of no validity in opposition to the antient law of the state; by which only the judges were directed to regulate their determinations²⁴. So great attention and reverence likewise did some succeeding princes shew to the general voice of the legislature, that if any person attempted, by a special petition, to obtain a rescript, to enable him to transgress the laws, he was punished by the loss of a third of his patrimony, together with some other very severe penalties²⁵.

From hence it will appear, that the *civil* constitution of Rome still bore many marks of its original freedom; and that, with regard to private and personal rights, the subjects enjoyed the benefit of their primitive, fundamental laws, in as ample a manner as in the times of the republic: that the authority of these laws was universal, and extended even to the Imperial family, though insolently distinguished by the title of *Divine*²⁶: and that the Emperors, with all that parade of arbitrary power, and actual exercise of the right of legislation, enjoyed those high privileges only in communication with, and not in exclusion of, the senate²⁷; which still continued to be the great oracle of the state, and the visible representative of the majesty of the commonwealth²⁸.

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²⁴ "Contra jus rescripta non valeant, quocunque modo fuerint impetrata. Quod enim publica jura præscribunt, magis se- qui judices debent." Cod. Theod. i. 2.
²⁵ Thus say the Emperors Gratian, Valentinian, and Theodosius, "Si quisquam speciali supplicatione eliciendum aliquod rescriptum tentaverit, ut transire ei formam liceat statutorum, tertiâ patrimonii parte multetur, et damnatus ambitus crimine, maneat infamis." C. i. 16.
²⁶ "Omnes legibus regantur, etiam si ad Divinam Domum pertineat." C. i. 14. 10.
²⁷ "Quamvis senatusconsultum perpetuam per se obtineat firmitatem, tamen nostris legibus etiam idem prosequimur." C. i. 16.
²⁸ Grav. de Rom. Imp. 21.

C H A P. VIII.

*State of the "Responſa Prudentum," and of the Profeſſion of the Law under the Emperors.—Different Sects of the Law.—Sabini-
nians.—Proculeians.—Medii et Herciſcundi.—Eminent Lawyers.*

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IT is now time to reſume the conſideration of thoſe other ſources of the Roman laws, which, though much contracted by the predominancy of the Imperial power, were not wholly annihilated, but ſtill continued to enjoy a reſpectable ſhare of their antient influence and authority. We have already taken notice of the reverence that was ſhewn to the great lawyers and orators, in the more early times of the republic; and how their opinions and reſponſes grew inſenſibly into eſtabliſhed law, and were received, under that character, by the ſilent approbation of an illiterate people¹; but without any other ſanction, than what accrued to them from the exalted rank of their authors², and their own intrinsic equity and merit.

Great however as the reſpect was, then entertained for the determinations of theſe eminent lawyers, they had not yet acquired ſuch an obligatory quality, as to make them binding upon a court of juſtice: on the contrary, they were expoſed to the attacks and animadverſions of pleaders and orators, who might, and often did, overturn their force³; conſequently, they amounted only to an in-

¹ Grav. O. J. 1. 41.

² Thus ſays Marcus in his dialogue with Atticus, "Summos fuiſſe in civitate noſtra viros, qui id interpretari populo, et reſpondere ſoliti ſunt." Cic. de L. L. 1. 4.

³ "Veſtra reſponſa, atque decreta et ever-
tuntur ſæpe dicendo, et ſine deſenſione

"oratoris firma eſſe non poſſunt." Cic. pro Mur. 13. And again, "Neque enim fieri poteſt, ut aliud judicari de jure, aliud reſponderi oporteat: nec ut quiſquam juris numeretur peritus, qui id ſtatuat eſſe juſ, quod non oporteat judicari." Cic. pro Cæc. 24.

ferior

ferior species of laws, depending much more upon their own inherent excellence, than upon any official authority of the persons from whom they proceeded.

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But Augustus, whose long and peaceable reign left him at full leisure to cultivate and encourage every polite and useful science, esteemed jurisprudence, of all others, the most worthy of his protection. The general liberty of giving answers to difficult questions, which every one, who presumed upon his own abilities, used heretofore to exercise, had been attended with numerous inconveniences; and had too frequently corrupted the purity of the antient law, by the introduction of many whimsical and overstrained subtleties⁴. It was a dangerous temptation, likewise, to many ignorant self-sufficient men⁵ to obtrude their own crude opinions upon courts of justice, and thus to erect themselves into a kind of public lawgivers: all which, when added to the general confusion of the times, had much obscured the original splendor, and lessened the consequence, of this important and honorable profession⁶. This wise and cautious prince, therefore, found it necessary to restrain this privilege to such only as were first approved and authorized by himself⁷.

* Cum permulta præclarè legibus essent constituta, ea jurisconsultorum ingeniis pleraque corrupta ac depravata sunt." Cic. pro Mur. 12.

⁵ Thus Marcus is made to observe to Atticus, "Nec vero eos qui ei muneri præfuerunt, universi juris expertes fuisse existimo." Cic. de L. L. 1. 4.

⁶ "Thus Cicero complains, "Cum multa præclara majorum, tum quod optime constituti juris civilis summo semper in honore fuit cognitio atque interpretatio: quam quidem ante hanc confusionem temporum in possessione suâ principes retinuerunt: tunc ut honores, ut omnes dignitates gradus, sic hujus scientiæ splendor delectus est." Off. 2. 19.

⁷ "Ante tempora Augusti publicè respondendi jus non a principibus dabatur: sed qui fiduciam studiorum suorum habebant, consulentibus respondebant. Neque responsa utique signata dabant: sed plerumque judicibus ipsi scribebant, aut testabantur, qui illos consulebant. Primus Divus Augustus, ut major juris autoritas haberetur, constituit, ut ex auctoritate ejus responderent, et ex illo tempore peti hoc pro beneficio caput." D. 1. 2. 2. 47.

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It is not improbable likewise, that Augustus had a still further view in this stroke of policy; which was, to secure to himself an intire command over the laws, and to bend them to the new principles of government, which were now to be introduced⁸. To avoid, therefore, alarming the jealousies and suspicions of the people, by any violent and open alteration of the antient legal constitution, he more prudently endeavoured to draw over the great professors of the law to his interest, by the irresistible charms of honors and rewards; and, by investing them with the supreme power of interpretation, he by degrees lessened the consequence of the magistrates, and reduced them to a state of absolute dependence upon these great oracles of justice, without appearing to depart from those familiar forms which had received the sanction of long usage⁹. But, however he might have been influenced herein by personal or political motives, like a truly magnificent and liberal prince, he founded a library in the temple of Apollo Palatine, and endowed it with the best collection of law books which the learning of those times afforded, for the general use of such as chose to pursue that course of study¹⁰.

The same policy seems to have been adopted by the generality of his successors¹¹; though Caligula, who, like most tyrants, hated those laws which restrained the exercise of his own arbitrary will, threatened to abolish the whole science at once¹². It does not appear, however, that he ever attempted to carry these menaces any further into execution; but the profession still continued to flourish,

⁸ Thus says the most discerning of all the Roman historians, "Cæsar dux reliquus —
"insurgere paulatim, munia senatus, magistratuum, *legum* in se trahere, nullo ad-
"versante." Tac. Ann. 1. 2.

⁹ Grav. O. J. 1. 43. & Hein. Ant. Rom. 1. 2. 39.

¹⁰ From this circumstance arises that expression of the Roman satirist,

"Jurisque peritus Apollo."

Juv. Sat. 1. 128.

¹¹ "Ergo Sabino concessum est a Tiberio
"Cæsare, ut populo responderet." D. 1.
2. 2. 47.

¹² V. p. 256.

and

and to be held in high estimation; and was honored by some new marks of distinction by Hadrian; who directed this power to be conferred, not upon every petitioner, but reserved it as a voluntary compliment, to be paid by the prince himself to superior merit ¹³.

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The Roman lawyers, being generally men of the highest rank and education, were much addicted to speculation, and were too fond of mixing the fanciful refinements of philosophy with the plain dictates of natural justice ¹⁴.

Sects of the
law.

This was particularly the case with those who were attached to the Stoic philosophy; a sect justly charged with arrogance and self-conceit, and eager to intermeddle with the concerns of temporal policy ¹⁵. The consequence of this was a great and, sometimes, irreconcilable diversity of opinion concerning the common rights of mankind, and the various obligations of civil society; which, in time, introduced two very remarkable sects into the profession of jurisprudence ¹⁶; well known by the names of Sabinians and Proculians ¹⁷.

The father of the Sabinians was Attæius Capito, a scholar of Ofilius. He flourished under Augustus and Tiberius; was a very zealous adherent to their party, and by the dint of too servile flattery, obtained the consulship from the former, and several other honorable marks of distinction from both ¹⁸. Though he readily

Sabinians.
Attæius Capito.

¹³ "Ideo optimus Princeps Hadrianus, cum ab eo Viri Prætorii peterent, ut sibi liceret respondere, rescripsit eis, *hoc non pati sed præstari solere: et ideo si quis fiduciam sui haberet, delectari se: populo ad respondendum se præpararet.*" D. 1. 2. 2. 47.

¹⁴ Grav. O. J. 1. 45.

¹⁵—"Stoicorum arrogantia, sectaque, quæ turbidos, et negotiorum appetentes faciat." Tac. Ann. 14. 57.

¹⁶ Grav. O. J. 1. 46.

¹⁷ For the subject of this chapter the reader is referred to D. 1. 2. 2. 47. to Grav.

O. J. 1. 44—104, and to another learned treatise, "De Sectis Sabinianorum et Proculianorum," by Goth. Mascovius, a celebrated professor of civil law at Leipzig.

¹⁸ "Capito insignitior infamia fuit: quod humani divinique juris sciens, egregium publicum, et bonas domi artes dehonestavit." Tac. Ann. 3. 71.

"Capito Attæius—principem in civitate locum studiis civilibus assecutus—consulatum ei acceleravit Augustus—Capitonis obsequium dominantibus magis probabatur." Id. ib. 75.

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fell in with the servile humor of the times, he yet professed a very steady attachment to the antient laws and constitutions of the republic¹⁹, and inflexibly opposed all far-fetched and novel interpretations²⁰. He was esteemed a very able scholar, and was the author of many works, particularly upon Pontifical Law, and the forms of judicature; but none of them have reached to later times, and his name is seldom mentioned even in the Digest.

Masurius
Sabinus.

Capito was followed by Masurius Sabinus, a person of so low extraction, that he was chiefly supported by the liberality of his scholars and auditors; but so eminent for his learning²¹, that he was raised at last to the equestrian order; and was the first who was publicly authorised by Augustus to give answers in law, which privilege was confirmed to him by Tiberius²²; and from hence, probably, the whole sect was distinguished by his name.

Cassius Lon-
ginus.

To him succeeded C. Cassius Longinus, of the family of Cassius, one of the murderers of Julius Cæsar. He lived from the time of Tiberius to that of Vespasian, and bore some of the highest offices, both in war and peace; but had too much integrity to be esteemed in those ages of lawless violence; and was, therefore, driven into banishment by Nero, but recalled by Vespasian, and died in peace in his own country²³. He always expressed a high regard for the primitive constitution, and thought that the modern innovations in the legal system were seldom productive of any material improve-

¹⁹ "Atteius Capito in his, quæ ei tradita fuerunt, perseverabat." D. 1. 2. 2. 47.

²⁰ Grav. O. J. 1. 74. Masc. ut sup. 1. 3.

²¹ Persius considers his opinion as the voice of the law itself:

"Cur mihi non liceat jussit quodcunque voluntas,

"Excepto si quid Masuri rubrica notavit."

Sat. 5. 89.

²² "Atteio Capitoni Masurius Sabinus successit—in equestri ordine fuit, et publice

"primus scripsit, posteaque hoc caput bene-

"ficiam dari a Tiberio Cæsare.—Sabino

"concessum est a Tiberio Cæsare, ut populo

"responderet; qui in equestri ordine jam

"grandis natu, et fere annorum quinquaginta

"receptus est: huic nec amplæ facultates fu-

"erunt, sed plurimum a suis auditoribus sus-

"tentatus est." D. 1. 2. 2. 47.

²³ D. 1. 2. 2. 47. Grav. O. J. 1. 82.

Masc. ut sup. 2. 2.

ment.

ment²⁴. His reputation among the Sabinians was so great, that from him the sect sometimes bore the name of Cassian. C H A P.
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Of the same school was Cælius Sabinus, who flourished under Otho and Vespasian; and from whom the title of Sabinians is supposed by some, though erroneously, to have been derived²⁵. Cælius Sa-
binus.

From hence, to the time of Antoninus, lived Priscus Javolenus, Alburnius Valens, Tiburnius Valens, Tuscianus and Salvius Julianus, all of the same persuasion; the last of which was grandfather of Didius Julianus, himself also eminent in that profession, and wealthy enough to purchase the imperial crown²⁶. Javolenus,
&c.

The chief of the Proculicians was Anstilius Labeo. He had been a pupil of Trebatius, a person of the most respectable character, and well known by his intimacy with Cicero, and all the other eminent men of those times; as well as with Augustus himself²⁷, who did him the honor to consult him in most legal questions of moment and difficulty. It may be a matter of curiosity to some of our readers to be informed, that the introduction of *codicils*, an invention of infinite service in the conveyance of private property, is ascribed to the same author. By the antient Roman law, the many formalities requisite to the validity of a solemn testament, which all persons, except such as were in actual military service, were bound to observe, rendered an act of this kind a very operose business; and, in various unexpected emergencies, impracticable. But it happened that Lucius Lentulus, a nobleman of consequence about the court, being Proculicians.
Trebatius,

the first in-
ventor of
codicils.

²⁴ "Ea tempestate Cassius cæteros præmi-
nebat peritia legum." Tac. Ann. 12. 12.

Upon a particular occasion he thus, but with great modesty, delivered his opinion in the senate: "Sæpenumero, P. C. in hoc ordine interfui, cum contra instituta et leges majorum nova senatus decreta potularentur: neque sum adversatus. Non quia dubitarem super omnibus negotiis

"melius atque rectius olim provisum, et quæ converterentur in deterius mutari; sed ne nimio amore antiqui moris studium meum extollere viderer." Tac. Ann. 14. 43.

²⁵ D. 1. 2. 2. 47. Grav. O. J. 1. 84. Masc. ut sup. 2. 3.

²⁶ D. 1. 2. 2. 47. Grav. O. J. 1. 45. 84. 85. Masc. ut sup. 2. 4. ad fin.

²⁷ Grav. O. J. 1. 66.

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absent upon a journey in Africa; and finding a necessity of making some additions to his will, which, according to the law, as it then stood, would not be valid, he applied to the Emperor to take his case into consideration; who having advised with several learned men, Trebatius in particular; and being well convinced of the equity of the case, and of the many good consequences of such an improvement, gave his immediate sanction to their use; from which time they have become universal²⁸.

Antistius
Labeo.

From the manner in which Horace²⁹ and others speak of this eminent professor, he appears to have been a person of great erudition and gravity; and to have paid a religious veneration to the antient laws of the constitution. But his disciple Labeo was of a somewhat different turn. He had a warm and lively imagination, and affected a profound knowledge in the primitive language of the Romans; by the help of which he discovered many latent and abstruse meanings in the laws, which often gave a very different sense to them, from what they had before ever borne. Such novel conceits, and wild interpretations, were naturally productive of great confusion and uncertainty; and caused him to be considered and represented as one perfectly out of his mind, even to a proverb; so as to

²⁸ “ Ante Augusti tempora constat, codicillorum jus in usu non fuisse: sed primus Lucius Lentulus, ex cujus persona etiam fideicommissa esse cæperunt, codicillos introduxit. Nam, cum decederet in Africa, scripsit codicillos testamento confirmatos, quibus ab Augusto petiit per fideicommissum, ut faceret aliquid: et, cum D. Augustus voluntatem ejus impleret, deinceps reliqui, ejus auctoritatem secuti, fideicommissa præstabant: et filia Lentuli legata, quæ jure non debebat, solvit. Dicitur autem Augustus convocasse sapientes viros, interque eos Trebatium quoque,

cujus tunc auctoritas maxima erat, et quæsisse an posset recipi hoc, nec absconans a juris ratione codicillorum usus esset? et Trebatium suasisse Augusto, quod diceret, utilissimum et necessarium hoc civibus esse, propter magnas et longas peregrinationes, quæ apud veteres fuissent; ubi, si quis testamentum facere non posset, tamen codicillos posset. Post quæ tempora, cum et Labeo codicillos fecisset, jam nemini dubium erat, quin codicilli jure optimo admitterentur.” I. 2. 25. pr.

²⁹ Sat. 2. 1.

become

become the standard of comparison for any person, who was arrived at the extreme pitch of extravagance and absurdity³⁰.

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Great allowances, however, must be made for the prejudices of this acute and spirited satirist; who may easily be supposed to have contracted a dislike to him, not only as he was a Stoic, but, especially, as embarked in the opposite faction to his patron, Augustus. Though, with all this, he was a person of the most incorrupt integrity; very warmly attached to the cause of republican liberty; and of great weight and authority with the whole people³¹.

The followers of Labeo were the Nervas, father and son. The former a great favorite of Tiberius, though by no means an abettor of his tyranny: but, as he had not influence enough over such an abandoned monster, to effect a reformation, rather than be a witness of those evils which he could not prevent, he determined to put an end to his own life, by a voluntary abstinence from food³². The son was so remarkable for the quickness and maturity of his genius, that he began to distinguish himself, and to give answers, at the age of seventeen. He was father of the Emperor of the same name.

Nerva.

Cotemporary with these was Licinius Proculus; supposed to have been a great intimate and partizan of Otho³³; but, whoever he was, his authority in his profession was so great, that the disciples of Labeo were from him denominated Proculeians³⁴.

Licinius Proculus.

Another bright ornament of the same sect, to which likewise he imparted his name, was Pegasus, "Præfectus Urbi," and Consul,

Pegasus.

³⁰ "Labeone infanior inter

"Sanos dicatur." Hor. Sat. 1. 3. 82.

³¹ Grav. O. J. 1. 73. "Labeo incorruptâ libertate, et ob id fama celebratior." Tac. Ann. 3. 75.

³² "Cocceius Nerva, continuus principis, omnis divini humanique juris sciens, integro statu, corpore inlæso, moriendi consilium

"cepit." Id. ib. 6. 26. D. 1. 2. 2. 47.

Grav. O. J. 1. 45. 75. Masc. ut sup. 3. 1.

³³ "Adjungitur Licinius Proculus, intimâ familiaritate Othonis, suspectus consilia ejus fovisse." Tac. Hist. 1. 46.

³⁴ D. 1. 2. 2. 47. Grav. O. J. 1. 45. 76. Masc. ut sup. 3. 2.

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under Vespasian; honors to which he raised himself by his personal merit, from a very obscure and humble station. He was so deeply learned, that he was called a book rather than a man; and was not less remarkable for his integrity than his erudition³⁵.

Celsus.

After him followed Juventius Celsus, and his son Julius Celsus. The first began to flourish under Domitian; was concerned in a conspiracy against the life of that tyrant; and, being discovered, escaped the punishment by a stratagem³⁶. The second was one of the privy council and assessors to Adrian³⁷, and lived to the reign of Antoninus Pius³⁸.

Neratius
Priscus.

The last of the Proculeian school was Neratius Priscus; of whom Trajan entertained so high an opinion; that it was expected he would have made him his successor in preference to Adrian³⁹; of which competition this great prince was so far from being jealous, that he assumed him afterwards into the number of his choicest counsellors⁴⁰.

These factions in the profession of jurisprudence continued in their full vigor, and were supported by great authorities on both sides, till the reign of Adrian, or Antoninus Pius; during all which period these eminent lawyers were used to send their opinions in writing to the judges, who were bound to determine according to

³⁵ D. 1. 2. 2. 47. Grav. O. J. 1. 77. Masc. ut sup. 3. 5. He is described under this character by a very honest and impartial satirist:

“Optimus, atque
“Interpres legum sanctissimus.”
Juv. Sat. 4. 78.

³⁶ Ιουβεντιος Κελσος, συνομωσας τε αια πρωτους μετα των επ' αυτω, και κατηγορηθης επι τούτω, θανατωσως εωδθη. Dio Cass. 67. 13.

³⁷ “Cum judicaret, in consilio habuit non
“amicos suos aut comites solum, sed jurif-

“consultos, et præcipue Julium Celsum, &c.” Spart. in Hadr. 18.

³⁸ D. 1. 2. 2. 47. Grav. O. J. 1. 78. 79. Masc. 3. 6. 7.

³⁹ “Frequens sane opinio fuit, Trajano
“id animi fuisse, ut Neratium Priscum, non
“Hadrianum, successorem relinquerit; mul-
“tis amicis in hoc consentientibus; usque
“eo, ut Prisco aliquando dixerit: com-
“mendo tibi provincias, si quid mihi fatale
“contingeret.” Spart. in Hadr. 4.

⁴⁰ D. 1. 2. 2. 47. Grav. O. J. 1. 80. Masc. 3. 8.

those

those dictates, even without any reason assigned for them⁴¹. It often happened, likewise, that judges themselves wanted advice and assistance in cases of doubt; and for that purpose, used to apply to these learned professors, who returned their answers in writing; many of which are still preserved in the Digest, most probably, in the exact form of words wherein they were originally delivered.

C H A P.
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From this time, therefore, the "Responſa Prudentum" began to assume a greater air of dignity and importance, than they had before enjoyed under the republic. Not that they were, in every respect, of the same universal authority, with those laws that were enacted by the constitutional, legislative powers; for, being interposed in particular cases, they were law only with regard to those: and, in this light, were of similar force with the Rescripts of the Emperor, which seldom went further than the point immediately in question⁴²; or, if they happened, on a future occasion, to be applied to any other cases, it was only under the character of principles of equity, not of precepts of law. Thus stood they during the first four centuries of the Imperial government, till adopted into the general body of laws, by the Emperors Theodosius and Valentinian; who confirmed the writings of many of the most eminent lawyers by name⁴³. They were afterwards received, in a still more authoritative manner, by Justinian; and are dispersed, in great plenty, through all parts of that valuable work called the Digest.

⁴¹ "Etiam sine probationibus ipse momentis auctoritas predest, quomodo jurisconsultorum valent responſa, etiamſi ratio non redditur." Sen. ep. 94.

"Responſa prudentum sunt ſententiæ et opinioniones eorum, quibus permiſſum erat de jure reſpondere: nam antiquitus conſtitutum erat, ut eſſent, qui jura publice interpretarentur, quibus a Cæſare jus re-

spondendi datum eſt, qui jurisconſulti appellabantur: quorum omnium ſententiæ et opinioniones eam auctoritatem tenebant, ut judici recedere a reſponſis eorum non liceret, ut eſt conſtitutum." I. 1, 2. 8.

⁴² Masc. ut ſup. 2. 1. 5, 6.

⁴³ "Papiniani, Pauli, Gaii, Ulpiani atque Modeſtini ſcripta univerſa firmamus." Cod. Theod. 1. 4.

The

The edicts of the Prætors, and other magistrates, with another inferior species of law, under the title of "Jus Honorarium," as far as they were admitted in the republic, have been explained in a former part of this work⁴⁴. They were continued likewise under the Imperial government; but were so much controuled and directed by the opinions of the lawyers, that they lost the greatest part of their antient dignity; and were preserved in so careless and perplexed a state, that, by the time of Hadrian, it became extremely difficult to ascertain either their dates, or intentions. This prince therefore, not less eminent for his political than his military talents⁴⁵, was desirous of diffusing order and regularity through every part of the constitution. He accordingly projected the noble design of reducing the whole Roman law into one regular system; and began by collecting the antient Prætorian Edicts, such at least as had stood the test of time and experience, and were found to be of the most extensive utility. This work was executed, with many material additions and improvements, by the famous Salvius Julianus, already mentioned, and called "Edictum Perpetuum;" because it then received a perpetual authority, which, till this time, was only annual and precarious. Nothing now remains of this work but some fragments, which have been collected by the industry of modern compilers, and are preserved in most of the editions of the "Corpus Juris Civilis"⁴⁶.

Edictum Perpetuum.

This judicious policy of Hadrian had established a more uniform rule of proceeding in the courts of justice, and, consequently, the ferment of contention began to subside. Practitioners now saw their way more clearly through the intricate mazes of subtle disputation; and the partizans of either sects came to entertain

⁴⁴ B. 2. c. 6.

⁴⁶ Grav. O. J. 1. 38. Masc. ut sup.

⁴⁵ "Disciplinam civilem non aliter tenuit, 7. 1, 2.
"quam militarem." Spart. in Hadr. 22.

more favorable and liberal notions of each other's tenets; they submitted their mutual sentiments to a more free and promiscuous discussion; and, in cases of real difficulty, all defects were supplied either by the interpretation of the prince himself⁴⁷, assisted by his council, or by some new constitution or rescript adapted to the purpose⁴⁸; which practice, begun by Hadrian, was observed by the best and wisest of his successors⁴⁹.

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The self-sufficiency of these sectarists being thus effectually humbled, all possible diligence was used to reconcile those contrarieties, with which the late inveterate spirit of controversy had long disfigured the grave and venerable mien of the antient legal system. These friends of moderation are distinguished, among the commentators of later ages, by the title of "Medii et Herciscundi," because they endeavoured to pursue the middle track between the two extremes⁵⁰. But, as the flame of disputation is not easily extinguished, in the heated imaginations of the professors of this litigious science, many despised this pacific scheme, and continued obstinate in their adherence to the tenets of their respective parties. These inconveniences were still increased and made immortal, by the carelessness of Tribonian, the compiler of the Digest, who disregarded the express directions of Justinian; which were, "to be particularly attentive to preserve such opinions only of the antient lawyers, as had stood the test of time and experience; and to insert none that might oppose or

Medii et
Herciscundi.

⁴⁷ "De his, quæ primo constituuntur, aut interpretatione, aut constitutione optimi principis statuendum est." D. 1. 3. 11.

⁴⁸ Frequent instances of these are still preserved in the Digest, of which the following, by the Emperors M. Aurelius and Ælius Verus, who are generally called "Divi Fratres," may serve as a specimen. Having been consulted upon a very difficult question,

concerning which there had been great difference of opinion among the lawyers, they add, "Sed cum et ipso Mæciano, et aliis amicis nostris, jurisperitis, adhibitis, plenius tractaremus, &c." D. 37. 14. 17.

⁴⁹ Masc. ut sup. 7. 5. This has already been observed of Alexander Severus. P. 336.

⁵⁰ Masc. ut sup. 8. 1, 2.

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destroy the force of each other⁵¹." In consequence of the neglect of this wise injunction, many traces of the old dissensions are still visible, in various parts of that comprehensive, and, otherwise excellent, collection⁵²; which will now always remain in the same perplexed state, for the perpetual emolument of practitioners; who must ever commemorate, with extreme gratitude, *the glorious uncertainty of the law*.

Caius. Among the eminent professors who lived after the time of Hadrian, and were the chief patrons of this conciliatory plan, the first was Caius, who was probably born towards the end of that reign; began to make a figure under Aurelius; and continued in high reputation to the time of Caracalla. He was the author of an Institute of the Roman Laws, in three, or, as some say, four books; from which Justinian borrowed a considerable part of his own, and therefore very properly calls him "Caius Noster"⁵³; from his having formed the first plan of that concise and elegant epitome, which that prince, in after-ages, so successfully adopted and improved⁵⁴.

Scævola. Another very distinguished character of the same age was Cerbidi-
dius Scævola⁵⁵; who was greatly in the confidence of M. Aurelius⁵⁶; and was not more remarkable for his own personal abilities, than for many eminent disciples, who were educated in his school; among whom was the Emperor Septimius Severus; together with Papinian,
Papinian. a kinsman and intimate friend of that prince⁵⁷; under whom, likewise, he enjoyed many honorable and lucrative preferments.

⁵¹ Thus says the Emperor; "Jubemus
" igitur vobis antiquorum prudentium, qui-
" bus auctoritatem conscribendarum inter-
" pretandarumque legum sacratissimi prin-
" cipes præbuerunt, libros ad jus Romanum
" pertinentes et legere, et elimare: ut ex
" his omnis materia colligatur, nulla, se-
" cundum quod possibile est, neque simili-
" tudine, neque discordia derelicta: sed ex
" his hoc colligi, quod unum pro omnibus
" sufficiat." Præf. 1. ad D. 4.

⁵² Masc. ut sup. 9.

⁵³ Proem. ad 1. § 6. Grav. O. J. 1. 83.

⁵⁴ Schult. Jur. Prud. Vet. ante Just.

⁵⁵ Grav. O. J. 1. 98. Masc. ut sup. 8. 5.

⁵⁶ "Ufus est Scævola præcipue, jurispe-
" rito." Jul. Cap. in M. Aur. 11.

⁵⁷ "Papinianum amicissimum fuisse Imp.
" Severo, et, ut aliqui loquuntur, affinem
" etiam per secundam uxorem, memoriæ
" traditur:—eumque cum Severo professum
" sub Scævola." Spart. in Car. 8.

Papinian having acquired an immense knowledge in his profession⁵⁸, and being no less famous both for his judgment and integrity, his answers were esteemed almost oracular: and his memory was holden in the highest veneration by all succeeding princes and legislators, who knew how to set a just value upon true merit. Thus the Emperors Theodosius and Valentinian, in a Rescript to the senate, in which they confirm the decisions of many great lawyers of antiquity, direct, that "where the opinions of these eminent professors should be found different, that of the majority should prevail; but when they were equal, that which was supported by the authority of Papinian; who, as he may justly claim a preference before any single one, ought to yield it to a number⁵⁹." St. Jerome is likewise said to allow him the same rank in the human law, as St. Paul bears in the divine⁶⁰.

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Justinian, with a laudable ardor for the propagation of legal knowledge, had prescribed a regular course of study for the use of young beginners; pointing out in what particular order the several books of the law were to be read. After two years employed in making themselves masters of the general elements and principles of the science, the students, on their entrance upon their third year, were to be admitted to the perusal of the choicest works of Papinian, with which their juridical labors were to end, and themselves to be distinguished by the honorable title of "Papinianistæ:" a kind of degree, taken with great ceremony, and celebrated with

⁵⁸ Spartian calls him "Juris asylum et doctrinæ legalis thesaurum." In Sev. 21. "Papinianus emineat; qui ut singulos vincit, ita cedit duobus." Cod. Theod.
⁵⁹ "Ubi diversæ sententiæ proferuntur, potius numerus vincat auctorum: vel si numerus æqualis sit, ejus partis præcedat auctoritas, in qua excellentis ingenii vir
 1. 4.
⁶⁰ Grav. O. J. 1. 99. Masc. ut sup. 8. 6. Hein. Hist. Jur. Civ. § 328—331.

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various festivities⁶¹; which, very possibly, gave the hint for the like practice, now in use in our modern universities⁶².

Papinian presided likewise as judge in this island, for several years, under Severus, who kept his court at York: from which circumstance, we find several Rescripts, sent to that city by the same Emperor, for the government of his British dominions, which are still extant in the body of the Civil Law. This fact will help to account for those numerous remains of Roman laws and customs, which descended to succeeding times; and prevailed in several of our provinces, the more northern ones especially, long before the supposed discovery and introduction of the civil law in the twelfth century: though, as their true origin was probably soon forgotten, and they were afterwards insensibly adopted by the Saxons into their legal system, the merit of their invention is often imputed to those illiterate conquerors.

Severus had so high an esteem for this excellent and uncorrupt minister, that he appointed him guardian to his children: but, upon the demise of that prince, his profligate son Caracalla, unwilling to submit to the restraint of so virtuous a monitor, soon dismissed him from his service⁶³; and not long after, as it is said, ordered him to be put to death, for refusing to justify the murder of his brother Geta.

⁶¹ Thus says the Emperor; "Ne autem tertii anni auditores, quos Papinianistas vocant, nomen et festivitatem ejus amittere videantur, ipse iterum in tertium annum per bellissimam machinationem introductus est: librum enim hypothecariæ ex primordiis plenum ejusdem maximi Papiniani fecimus lectione, ut et nomen ex eo habeant, et Papinianistæ vocentur, et ejus reminiscentes, et lætificentur, et festum diem, quem cum primum leges ejus accipiebant, celebrare solebant, peragant: et maneat viri sublimissimi præfectorii Papiniani, et per hoc in æternum memoria,

"hocque termino tertii anni doctrina concludatur." Præf. 1. ad D. Const. 2. § 4.

⁶² It is not unlikely that the compilers of the statutes of that university, to which the author hath the honor to belong, had an immediate view to the present constitution of Justinian, in the form they have directed to be used, on the presentation of a scholar to a degree in Civil Law; viz. "Ut admittatur ad lectionem cujuslibet libri Institutionum Imperialium," &c. and so of presentations to degrees in other faculties.

⁶³ Τους δὲ δὴ οικειοὺς τοὺς μὲν ἀπελάξεν, ὡς καὶ Πάπινιανος δὲ ἐπαρχὸς ἦν. Dio Cass. 77. 1.

This,

This, however, is very dubious, even in the opinion of Spartian, who relates it⁶⁴ with all its minute circumstances; as Dio, a much better writer, who lived very near the time, mentions his being murdered by that prince's command, but without assigning any reason for it at all⁶⁵. There is, likewise, a considerable difference of opinion concerning his age, at the time of his death; some authors making him no more than thirty-six⁶⁶; though others, with greater probability, speak of him as much farther advanced in years, and as having arrived to the full period usually allotted to man⁶⁷.

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The same age produced Domitius Ulpian, another shining example of juridical and political learning⁶⁸, by birth a Syro-Phœnician; who, during the reign of Septimius Severus, had been assessor to the Prætors, and, together with Paulus, to Papinian himself⁶⁹. Being too virtuous, however, to be intrusted by a tyrant, he was dismissed from his offices by Heliogabalus⁷⁰; but restored to them by Alexander Severus, to whom he had been tutor, and who, from a just sense of his abilities, always consulted him in every question of importance; directed himself by his counsels⁷¹; and,

Ulpian.

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⁶⁴ "Scio de Papiniani nece multos ita in literas retulisse, ut cædis non sciverint causam, aliis alia referentibus: sed ego malui veritatem opinionum edere, quam de tanti viri cæde reticere.—Egisse quin etiam (sc. Papinianum) ne occideretur: (sc. Geta) atque ideo una cum iis qui fautores fuerant Getæ, a militibus, non solum permittente, verum etiam scedente Antonino, occisum." *Æl. Spart. in Car. 8.*

⁶⁵ *Εκ δὲ τῶν ἐπιφανέων ἀνδρῶν ἀλλοῦς τὶ (ἀπεκτείνῃ, sc. Caracalla) καὶ τοῦ Παπινιανῶς καὶ τῶν γὰρ τοῦ Παπινιανῶς φόνους ἀπὸ τῆς ἐπιτιμῆς, ὅτι ἀξίῳ αὐτοῦ, καὶ οὐ ξίφει διέχρησάτο.* *Dio. Cass. 77.*

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⁶⁶ Grav. O. J. 1. 99.

⁶⁷ Hein. Hist. Jur. Civ. § 331.

⁶⁸ Grav. O. J. 1. 100. Masc. ut sup. 8. 7. Hein. Hist. Jur. Civ. § 336—340.

⁶⁹ "Qui tamen ambo assessores Papiniani fuisse dicuntur." *Lampr. in Alex. Sev. 26.*

⁷⁰ "Removit Ulpianum jurisconsultum, ut bonum virum." *Lamp. in Heliog. 16.*

⁷¹ "Neque unquam solum quemquam, nisi præfectum suum, vidit, et quidem Ulpianum, ex assessore semper suo; causa justitiæ singularis. Cum autem alterum adhibuit, et Ulpianum rogari jussit." *Lamp. in Alex. Sev. 31.* Nam et consiliarius

"Alexandri, et magister scrinii Ulpianus fuisse perhibetur." *Id. ib. 26.* "Ulpianum pro tutore habuit, primum repug-

nante matre, deinde gratias agente:—

"atque ideo summus imperator fuit, quod ejus conciliis præcipue rempublicam rexit." *Id. ib. 51.*

"Cum inter suos convivaretur, aut Ulpianum aut doctos homines adhi-

"bebat,

as the surest token of respect and confidence, distinguished him by the name of *parent*⁷².

To his influence over that polite and amiable prince are owing, as is generally supposed, the many mild and moderate laws relating to the fiscal rights of the Imperial crown; which, with many others on various subjects, are, to his great honor, still preserved in the Digest. He was a steady friend to the natural rights of mankind, and always solicitous that the severity of the law should be mitigated by equity: an implacable enemy to tyranny of every kind, particularly that of the Prætorian bands; for his steady opposition to which he at last fell a sacrifice to their indignation, almost in the arms of the Emperor, and his mother; who had often before defended him from their fury, by opposing to it the imperial purple⁷³, hitherto held sacred by the soldiery. But as he is said to have caused two of their leaders to be put to death, that he might succeed them in their præfecture⁷⁴, they could no longer contain their resentment.

The truth of this charge, however, against Ulpian is very justly doubted; not only as it was quite inconsistent with his general character; but, likewise, as he was already invested with an office of the same kind⁷⁵, and enjoyed all the other honors which an indulgent master could confer upon him. A similar answer may be given to the accusation, of his being an enemy to the Christians, and having

" bebat, ut haberet fabulas literatas, quibus se recreari dicebat et pasci." Id. ib. 34. Δομίλιον δὲ τινι Οὐλπιανῷ τῇ τε τῶν δορυφορῶν προ-
στασίαν, καὶ τὰ λοιπὰ τῆς ἀρχῆς ἐπιτελεῖν πραγματείας.
Dio Cass. 80. 1. " Affessorem habuit vel
" scrinii magistrum Ulpianum, juris condi-
" torem." Eutr. 8. 13.

⁷² Thus, in a rescript concerning the punishment of those who had broken open granaries, he adds, " Quod si majorem animad-
" versionem exigere rem deprehenderit; ad
" Domitium Ulpianum, præfectum prætorio,

" et parentem meum, reos remittere curabit." C. 4. 65. 4.

⁷³ " Quem sæpe a militum ira objectu
" purpuræ summæ defendit." Lamp. in
Alex. Sev. 51.

⁷⁴ Τῶν δὲ δὴ Φλαβιανῶν, τοὺς τε Χρηστοὺς ἀποκτείνοντας,
ὥς αὐτοὺς διαδίζηται, καὶ αὐτὸς οὐ πολλὰ ὕστερον
ὑπὸ τῶν δορυφορῶν, ἐπιθιμῶναι οἱ νεκτοί, κατισφαγῆ-
καί τοι καὶ πρὸς τὸ παλάσιον ἀναδραμεῖν, καὶ πρὸς
αὐτοὺς τοὺς αυτοκράτορας, τῇ τε μητρὶ αὐτοῦ καταφυ-
γάν. Dio Cass. 80. 2.

⁷⁵ Sex. Aur. Vict. in Cæf. 24.

been

been the cause that some severe edicts were published against them; the Emperor, and his mother Mammæa, being well known to be their professed friends ⁷⁶.

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Ulpian left behind him a great variety of works, none of which have reached our time, except a few fragments, collected into one body, under the name of "Tituli ex Corpore Ulpiani;" and likewise several of his opinions and responses, which are preserved by Justinian in the Digest.

Another eminent cotemporary of Ulpian was Julius Paulus, who had been joint assessor with him to Papinian ⁷⁷; and enjoyed an equal share of honors and dignities from the same princes, under whom they both flourished ⁷⁸. He differed from him, however, very widely in his principles; being a rigid Sabinian, and a strict adherent to the mere letter of the law ⁷⁹. He was one of the most voluminous writers that appeared in the profession of Roman jurisprudence: but most of his works are now lost, except what are preserved in the Digest; and likewise five books of choice and established maxims, written for the use of his son, which are still extant, under the title of "Libri Receptarum Sententiarum." These were in so high esteem, in earlier times, that the Emperors Theodosius and Valentinian gave them a perpetual and general authority ⁸⁰: Modestinus, one of his cotemporaries, ranks him, together with Scævola and Paulus, among the chief sages of the profession ⁸¹.

Julius
Paulus.

⁷⁶ Vit. Ulp. a Jo. Bert. et Gul. Grot. in Schult. Jur. Prud. Vet. Ante-Just.

⁷⁷ "Paulum et Ulpianum in magno honore habuit, quos præfatos ab Heliogabalō alii dicunt factos, alii ab ipso." Lamp. in Alex. Sev. 26. "Ut probant Pauli et Ulpiani præfecturæ, qui Papinianō in consilio fuerunt." Spart. in Pesc. Nigr. 7.

⁷⁸ Thus we find him taken notice of by Alexander Severus; "Adhuc Domitium Ulpianum, quem Heliogabalus prætorianis præfecerat, eodem honore retinens:

"Pauloque inter exordia patriæ reddito, juris auctoribus, quantus erga optimos, atque æqui studio esset, edocuit." Sex. Aur. Vict. in Cæs. 24.

⁷⁹ Grav. O. J. 1. 101. Masc. ut sup. 8. 8. Hein. ut sup. § 341—343. Schult. ut sup.

⁸⁰ "Pauli quoque sententias semper valere præcipimus." Cod. Theod. 1. 4.

⁸¹ "Ita enim et Cerbidiū Scævola, et Julius Paulus, et Domitius Ulpianus, Coryphæi legum prudentum scribunt." D. 27. 1. 13. 2.

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Modestinus.

The last of these famous luminaries of the law was Herennius Modestinus, a disciple of Ulpian: a very celebrated scholar and writer, and particularly eminent for his skill in the Greek language, in which some of his laws are still extant in the Digest⁸². He was tutor to the younger Maximin⁸³; and in high favor afterwards with the Emperor Gordian⁸⁴.

It was necessary to lay before the reader a short view of these illustrious characters, especially the five last; because to their diligence we chiefly owe the preservation of the opinions, and other precious remains of their predecessors in that honorable profession, quite from the Augustan age, if not indeed much higher; as well as the many valuable additions wherewith they themselves enriched the Roman constitution; and which were so highly approved by future princes, as to be received into the general body of laws, without any defalcation whatsoever⁸⁵. Their works, which, as we have seen, were very numerous, underwent a strict scrutiny by Justinian, and the compilers of the Digest; wherein, such as were thought proper to be adopted into this new and authentic collection, still appear under the names of their respective authors; as will be easily seen, by referring to the heads of the several laws, as they stand in that work.

⁸² D. 27. 1.

⁸³ "Ufus est jurisperito Modestino." Jul. Cap. in Max. Jun. 1.

⁸⁴ Grav. O. J. 1. 102.

⁸⁵ Thus say the Emperors Theodosius and Valentinian; "Papiniani, Pauli, Gaii, Ulpiani, atque Modestini scripta universa firmamus. Ita ut Caium atque Paulum, Ulpianum, et ceteros comitetur auctoritas lectionis, quorum tractatus atque sententias prædicti omnes suis operibus miscuerunt,

"ratam esse censemus, ut Scævola, Sabini, Juliani, atque Marcelli, omniumque quos illi celebrârunt: si tamen eorum libri, propter antiquitatis incertum, codicum collatione firmentur." Cod. Theod. 1. 4.

The remains of the works of these illustrious authors are preserved in one volume, intitled "Jurisprudentia Vetus Ante Justinianea," by Ant. Schultingius, Lug. Bat. 1717.

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A general View of the State of the Roman Government, from the Death of Alexander Severus, to the Close of the Third Period.

THE personal accomplishments of Alexander Severus; the prudent choice he made of his ministers; and the wise principles of government which he adopted; had already, in the short space of thirteen years, re-established the empire upon a solid and durable basis; and seemed to promise a long continuance of its welfare and prosperity¹. But the times were grown too corrupt, to admit of a general reformation; and the virtues of the prince, instead of becoming models of imitation, were too often the objects of jealousy and obloquy. The senate and people, indeed, were well reconciled to his administration², and shewed a grateful sense of the happiness they enjoyed under his protection: but the soldiery, immersed in every kind of sensuality and disorder, could not behold with patience that purity of manners, which served only as a rebuke to their own vices. Trembling at the revival of that discipline, which they foresaw would soon put an effectual stop to their licentious practices, they anticipated the fatal blow to themselves, by the murder of their royal master³. To aggravate the public loss, and to add insult to treason, they instantly made choice of an illiterate and bloody bar-

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A. D. 235.

¹ "Neque ultra annos tredecim imperio
" functus rempublicam reliquit firmatam
" undique. Quæ jam tum a Romulo ad
" Septimium certatim evolans Bassiani con-
" filiis, tanquam in summo constitit. Quo
" ne confestim laberetur Alexandri fuit."
Sex. Aur. Viêt. de Cæs. 24.

² "Cum ingenti amore apud populum et

" senatum vixit." Æl. Lamp. in Alex.
Sev. 59.

³ "Cum tantæ severitatis vim milites in-
" horrescunt (unde etiam Severi cognomen-
" tum accesserat), agentem casu cum paucis
" —trucidavere." Sex. Aur. Viêt. de Cæs.
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barian, an utter stranger to the senate⁴; one who held it for an established maxim, that power could only be supported by cruelty⁵; and whose fierce and savage disposition⁶ has deservedly placed him in the first ranks, among the most infamous and abhorred tyrants of antiquity⁷.

From the afore-cited passages, and from some others that will soon follow, it should seem to have been the general opinion of those times, that every election of an Emperor, by the sole authority of the army, was an infringement of the prerogatives of the senate; and that it was a necessary qualification in the person elected, to be either a member of, or nearly related to, that body. There was not, indeed, any express law to support these pretensions, neither was it likely there should be any; because the Imperial office was itself an usurpation upon the rights of the republic. But the usurpers being all persons of the first families and consequence in the state, the senate, with whom they were intimately connected, gradually acquired an interest in their appointment, which very well supplied the want of a positive law. Therefore, upon every new accession, though effected without the concurrence of the fathers in the first instance, their subsequent consent was generally esteemed essential to the completion of the act.

But the nomination of Maximin was made by the army, in open defiance of all former precedents; as if purposely designed to affront the senate, and degrade the majesty of the empire. To add to this

⁴ "Post hunc Maximinus ex corpore militari primus ad imperium accessit, sola militum voluntate, cum nulla senatus intercessisset auctoritas, neque ipse senator esset." Eutr. 9. 1. "Primus e militaribus, literarum fere rudis, potentiam cepit suffragiis legionum." Sex. Aur. Vict. de Cæs. 25. "Maximinus primus e corpore militari, et nondum senator, sine decreto senatus, Augustus ab exercitu appellatus

"est." Jul. Cap. in Max. 8.

⁵ "Erat ei persuasum, nisi crudelitate imperium non teneri." Id. ib. 8.

⁶ "Homo natura ferus, sic exarsit, ut non hominem sed belluam putares." Id. ib. 17.

⁷ Tam crudelis fuit, ut illum alii *Cyclopem*, alii *Busiridem*, nonnulli *Phalarim*, multi *Typhonem*, vel *Gygem* vocarent." Id. ib. 8.

indignity,

indignity, the fathers were obliged to confirm it, by their outward and formal approbation⁸; though they stood in such dread of the cruelty of Maximin, that it was made a part both of their public and private supplications to their gods, in which they were likewise joined by the women and children, that he might never set his foot within the walls of Rome⁹.

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But this general consternation soon ceased, upon the proclamation of the two Gordians, by the African legions; and on this joyful occasion the consul convoked the senate, which immediately obeyed the summons, and assembled with the prætors, ædiles, and tribunes of the people¹⁰: a circumstance highly worthy of attention; as it shews, that the antient magistrates of the republic were not yet totally annihilated or swallowed up by the Imperial power; but that they still continued to appear in their distinct characters, and incidentally to discharge the functions originally belonging to their several offices. This gave them an opportunity, likewise, of asserting their own supreme authority, independent of the army; which they exercised in the most explicit manner, by unanimously proclaiming the Maximins public enemies to their country; and by acknowledging the Gordians as the lawful Emperors¹¹.

The decree, by which these important effects were produced, is called by the historian, a *tacit act of the senate*; a mode of proceeding,

“ Senatus-consultum Tacitum.”

⁸ “ Quod tamen etiam patres, dum periculorum existimant inermes armato resistere, approbaverunt.” Sex. Aur. Vict. de Cæs. 25.

⁹ “ Senatus eum tantum timuit, ut vota in templis publice privatimque, mulieres etiam cum suis liberis facerent, ne ille unquam urbem Romam videret.” Jul. Cap. in Max. 8.

¹⁰ The historian thinks this act of the senate of so much moment, as to call the particular attention of his readers to the consideration of it: “ Interest,” says he, “ ut senatusconsultum, quo Gordiani imperatores appel-

lati sunt, et Maximinus hostis, literis pro-pagetur. Non legitimo sed indicto senatus die, consul jam domi conventus, cum prætoribus, ædilibus, et tribunis plebis, venit in curiam.” Jul. Cap. in Gord. 11.

¹¹ To take it in their own words, as preserved by the historian: “ Maximinum hostem omnes judicamus. Maximinum cum filio diis inferis devovemus. Gordianos Augustos appellamus. Gordianos principes agnoscimus. Imperatores de senatu Dii conservent: imperatores nobiles victores videamus: imperatores nostros Roma videat. Hostes publicos qui occiderit, præmium merebitur. Id. ib.

G g g

which,

which, according to the author here referred to, originated from the special necessities of the public; either when some imminent danger was apprehended from a foreign enemy; or when it was thought expedient to form some particular schemes, which were no sooner to be resolved on, than executed. Therefore, to prevent discovery, all clerks, scribes, and other official servants, were excluded, and the whole business was transacted by the senators themselves, as in the present case, that their resolutions might not reach the ears of Maximin^{us}.

From the difficult and perilous situations, to which Rome was so often reduced, there can be no doubt that these *tacit acts* were very frequent: and yet there are no certain traces of them to be found in earlier times, under that title, among the antient Roman writers; the want of which induced our author to give the foregoing concise, but satisfactory, explanation of their nature. It is very possible, likewise, that, as no further notice is taken of them in the subsequent reigns, this was the last effort of its kind, ever made by the senate to assert its own independency: for upon the accession of Diocletian, which followed in less than half a century, the dignity and consequence of that body was so effectually humbled, that little more remained of it, than a mere formal existence. The practice itself, however, being of very material use, was still continued, but was only transferred to other hands: for in the time of Constantine, to whom the same author dedicates his history, a kind of *privy council* appears to have been established, the members of which were bound by

“ Dicit Junius Cordus illud *senatusconsultum* fuisse *Tacitum*: quod quale sit, aut quare sic appellatum, brevi exponam.— Hunc autem morem apud veteres necessitates publicæ reppererunt; ut si forte aliqua vis ab hostibus immineret, quæ vel cogeret humilia captare consilia, vel aliqua constituere, quæ non prius oporteret dici quam effici, vel si nollent ad amicos aliqua per-

“ manere, *senatusconsultum tacitum* fieret: ita ut non scribæ, non servi publici, non censuales, illis actibus interessent, senatores exciperent, senatores omnium officia censualium scribarumque complerent, ne quid forte proderetur. Factum est ergo *senatusconsultum tacitum*, ne res ad Maximinum perveniret.” Jul. Cap. in Gord. 12.

solemn

solemn oath to affect a profound ignorance of all secret resolutions of state, till after their completion¹³.

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The councils of modern princes and states, in these more refined ages, are probably formed upon similar models, though there is little occasion to refer them to any particular archetype; as they have a natural relation to the necessities of every regular government, and are founded in the first principles of civil policy. It is true, indeed, that an arbitrary sovereign, buried in the occult retreats of a cabinet, and surrounded by his venal and servile tools of office, may form plans of tyranny, of the most fatal tendency to the happiness of his subjects. But the genuine merits of political institutions are not to be estimated by their possible abuses. Secrecy, in a certain degree, is necessary under the most gentle and liberal form of government; as without it the best concerted schemes of national defence and security would be anticipated, by the subtle artifices of a vigilant and sagacious enemy. In such a case, therefore, it becomes a sacred and inviolable duty to the public: and those precipitate and officious politicians, who, for the sake of indulging a vain and impertinent curiosity, or, what is still worse, from wild and ill-conceived notions of the privileges of a free people, imagine they have a right to partake of the private councils of the ruling power, are only contending for a liberty to betray their own interests, and to disappoint every measure, how wisely soever contrived, for the welfare of their country.

From the close of the reign of Alexander Severus, the symptoms of decay became every day more rapid and manifest in this mighty empire: for though its constitution had been long unsound and defective, it had hitherto been cherished and kept in tolerable vigor, by the princes of the preceding century; the majority of whom discharged the duties of that exalted station, with an attention and

¹³ " Omnia exemplum *senatusconsulti* Tac- " publicanda: de quibus adjurare etiam so-
" *citi* non aliud est hodie, quam quod vestra " letis, ne quis ante rem completam, quid-
" clementia, convocatis ad interiora majo- " quam vel audiat vel intelligat." Jul. Cap.
" ribus, ea dispenit, quæ non sunt omnibus in Gord. 12.

vigilance, that equally bespoke the affection of the parent, and the integrity of the magistrate. But the distractions of the succeeding times defeated all the good effects of the most liberal systems of civil policy. Emperors, indeed, were chosen as heretofore; but they were the mere creatures of tumult and faction; suddenly nominated, without regard to birth, rank, or country, either by the senate or soldiery, as each could snatch the fleeting opportunity; and, feeling the tenderness of the ground on which they stood, were too intent upon securing their own power, to bestow a thought upon the general glory and prosperity of the empire¹⁴. It must be confessed, however, that some few worthy exceptions are yet to be found in the midst of this disgusting catalogue of tyrants; but the shortness of their reigns, and the total want of public virtue, prevented them from bringing their salutary designs to maturity.

An antient historian has recorded a somewhat ludicrous, though too just, observation of a jester in the court of Claudius the Second, that *Good princes were so very rare, that all who deserved that name might be drawn in the compass of a single ring*. For this he assigns a variety of very sensible and apposite causes, which well deserve to be remembered; not only as they describe the true character of those times; but as they may serve likewise for useful warnings, to point out those rocks and precipices, which both princes and people, in all ages and countries, are equally concerned to avoid. Among these were enumerated, an universal profligacy of manners, arising from immoderate wealth and abundance; a train of false friends, treacherous guards, insatiable eunuchs, weak and contemptible courtiers, and a total unacquaintance with public business. Add to these, a self-interested combination of crafty ministers, plotting to deceive

¹⁴ “ Abhinc dum dominandi suis, quam “ que, nobiles atque ignobiles, ac barbari
“ subigendi externos, cupientiores sunt, at- “ multi.” Sex. Aur. Viſt. de Cæſ. 24.
“ que inter ſe armantur, magis Romanum And again, “ Eo prolapſi mores ſunt, uti ſuo,
“ ſtatum quaſi abrupto præcipitavere, im- “ quam reipublicæ, magisque potentiæ, quam
“ miſſique in imperium promiſcue boni mali- “ gloriæ ſtudio plures agant.” Id. ib. 33.

their prince, and to dictate what he shall confirm by his approbation: a prince, who being immured in his palace, knows nothing of the state of public affairs, and is obliged to receive that for truth, which is told him by others; who appoints for judges such as are unworthy of that office; and removes from the administration those whom he ought to employ: from all which the author very justly concludes, that nothing is more difficult to be found, than a good prince¹⁵.

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The ignominious captivity of Valerian, and the profligate indolence of Gallienus, brought an indelible disgrace upon the Roman arms, and were equally fatal to the civil government¹⁶. The utter want of spirit and activity, in the executive power at home, encouraged the ambitious hopes of pretenders in the more distant regions; and tempted them to set up almost as many distinct sovereignties, as provinces¹⁷. Many of these, indeed, soon expired, through their own weakness; but others survived, and acquired strength enough, to set the bravest princes and commanders at defiance; and, finally, so divided the interest of this vast and ill-connected empire, and gave

15 " Vides, quæso, quam pauci sint principes boni, ut bene dictum sit a quodam mimico scurra Claudii, hujus temporibus, in uno annulo bonos principes posse perscribi atque depingi. At contra, quæ series malorum? Ut enim omittamus Vitellios, Caligulas, et Neronas; quis ferat Maximinos et Philippos, atque illam inconditæ multitudinis faciem? Tametsi Decios excerpere debeam, quorum et vita et mors veteribus comparanda est. Et quæritur quidem quæ res malos principes faciat? Jam primum nimia licentia, deinde rerum copia; amici præterea improbi, satellites detestandi, eunuchi avarissimi, aulici vel stulti vel detestabiles, et (quod negari non potest) rerum publicarum ignorantia. — Colligunt se quatuor vel quinque, atque unum consilium ad decipiendum imperatorem capiunt: dicunt quod probandum sit. Imperator, qui domi clausus est, vera non novit: cogitur hoc

tantum scire, quod illi loquuntur: facit judices quos fieri non oportet; amovet a republica quod debeat obtinere. Quid multa? ut Diocletianus ipse dicebat, Bonus, cautus, optimus venditur imperator. Hæc Diocletiani verba sunt, quæ idcirco inferui, ut prudentia tua sciret, nihil esse difficilius bono principe." Fl. Vop. in Aur. 42 & 43.

16 " Horum (sc. Valeriani et Gallieni) imperium Romano nomini perniciosum, et pene exitiabile fuit, vel infelicitate principum, vel ignavia." Eutr. 9. 6.

17 Thus says the historian of Gallienus; Hæc vita Gallieni fuit, breviter a me literis intimata, qui natus abdomini et voluptatibus, dies ac noctes vino et stupris perdidit. Orbem terrarum triginta prope tyrannis vastari fecit, Romanum dehonestantes imperium, ita ut etiam mulieres eo melius imperarent." Treb. Poll. in Gall.

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it so severe a shock, that, with all its efforts, it could never recover its pristine grandeur and stability.

The senate, all this while, preserved its antient ostensible majesty, and superiority over the whole; though its actual influence in the state depended much more upon the disposition of the Emperors, and the forbearance of the army, than upon its own internal vigor. Thus Gallienus, conscious that his own sloth and effeminacy had exposed him to the contempt of the world; and fearful, lest the Imperial power should therefore be transferred into the hands of the principal nobility; forbade all the senators from entering into any military employments, and from having any connexions with the army¹⁸.

A. D. 268.

The accession of Claudius, amidst the universal acclamations of every order of men, inspired new life into the drooping empire¹⁹; and gave hopes of a reign, the most propitious to the constitution, of any that had been known, since the commencement of the Imperial government. All the writers of the times speak of his character, in the highest terms of esteem and reverence; as having united in his own person the heroism of Trajan, the humanity of Antonine, and the moderation of Augustus, in so easy and natural a manner, as not to appear the mere copies of the virtues of his predecessors; but as valuable originals, worthy of their future imitation, had those princes not existed before him²⁰. But, however
this

¹⁸ "Patres quidem, præter commune Romanum malum orbis, stimulat proprii ordinis contumelia: quia primus ipse, metu fœcordiæ suæ, ne imperium ad optimos nobilium transferretur, senatum militia vetuit; etiam adire exercitum." Sex. Aur. Vict. de Cæs. 33.

¹⁹ "Claudii imperium milites, quos fere contra ingenium, perditæ res subigunt recta consulere, ubi afflicta omnia perspex-

ere, avide approbant extolluntque, viri laborum patientis, æquique ac prorsus diti reipublicæ." Sex. Aur. Vict. de Cæs. 34. "Militibus sedatis, Claudius, vir sanctus ac jure venerabilis, et bonis omnibus carus, amicus legibus, acceptus senatui, populo bene cognitus, accepit imperium." Treb. Poll. in Gall. 15.

²⁰ Thus says the historian in a kind of rapture: "Quid in illo non mirabile, quid non conspicuum?"

this may be, thus far is certain, that in the space of two years, he not only repelled a most formidable invasion of the associated nations of the North, but he improved the political system with the addition of many excellent laws²¹; so that had his reign been protracted to the utmost length of time usually assigned to human nature, it is not too extravagant a compliment to his memory to say, that it would have appeared short in the eyes of a happy and grateful people²².

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The stern and haughty temper of Aurelian²³ was very unfavorable to the senatorial interests. He treated the members of that body with the most unwarrantable cruelty, and put them to death upon the slightest accusations²⁴; so as to acquire the invidious title of *Pedagogue of the Senate*²⁵. Full of those ideas of absolute power, which a military course of life is too apt to suggest, he ventured to put on a diadem, together with other external ornaments

A. D. 270.

²¹ "conspicuum? Quid non triumphalibus vestustissimis præferendum? In quo Trajani virtus, Antonini pietas, Augusti moderatio, et magnorum principum bona sic fuerunt, ut non ab aliis exemplum caperet, sed, etiamsi illi non fuissent, hic cæteris reliquisset exemplum." Treb. Poll. in Claud. 2. And he thus concludes the history; "Longum est tam multa, quam meruit vir ille, perscribere: unum tamen tacere non debeo, quod illum et senatus et populus, ante imperium, et in imperio, et post imperium, fix dilexit, ut satis constet, neque Trajanum, neque Antoninos, neque quemquam alium principem, sic amatum." Id. ib. 18.

²² "Leges optimas dedit." Id. ib. 2. "Parcus vir ac modestus, et iusti tenax, et rei publicæ gerendæ idoneus." Eutr. 9. 8.

²³ "Breve illius in imperio fuit tempus; sed breve fuisset, etiamsi quantum hominum vita suppetit, tantum vir talis imperare potuisset." Treb. Poll. in Claud. 2.

²⁴ "Fuit sævus et sanguinarius, et trux omni tempore." Sex. Aur. Vict. ep. 35. "Vir in bello potens, animi tamen immotus, et ad crudelitatem propensioris. — Sævus et sanguinarius, ac necessarius magis in quibusdam, quam in ullo amabilis imperator." Eutr. 9. 9. "Aurelianus, quod negari non potest, severus, truculentus, sanguinarius fuit princeps." Fl. Vop. in Aur. 36.

²⁵ "Interfecti sunt nonnulli etiam nobiles senatores, cum his leve quiddam, et quod contemni a minore principe potuisset, vel unus, vel levis, vel vilis testis objiceret." Fl. Vop. in Aur. 21. "Dicitur præterea hujus fuisse crudelitatis, ut plerisque senatoribus simulatam ingereret factionem conjunctionis ac tyrannidis, quo facilius eos posset occidere." Id. ib. 39.

²⁶ "Populus Romanus vulgo dicebat, Aurelianus pædagogum esse senatus." Id. ib. 37.

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of the regal character, hitherto unknown in Rome²⁶; an attempt, from which even the pride of Caligula was obliged to desist; conscious that he should give less offence to his subjects, by calling himself a God, than a King²⁷.

But with all this, the reign of Aurelian was both glorious and beneficial to the empire; as he recovered many of its antient possessions²⁸; restored military discipline; put some check upon the dissolute manners of the times; fortified the city of Rome²⁹; and improved its constitution with several wise laws³⁰. Qualities of this striking and heroical nature easily secured him the general love of the people, though he was dreaded by the senate³¹. But his inflexible severity drew upon him a violent and untimely death³²; and upon the whole, in point of reputation, he holds no more than a middle rank among the princes of antiquity³³.

It should seem, however, from the singular consequences of the unexpected demise of Aurelian, that the personal characters of princes derive as large a share of their lustre from the circumstances of the times, as from their own intrinsic merit. Though destitute of those amiable and valuable accomplishments, which deserve the name of real virtues, and which could have rendered him an object of esteem, in the

²⁶ "Iste primus apud Romanus *diadema* capiti innexuit: gemmisque, et aurata omni veste, quod adhuc fere incognitum Romanis moribus videbatur, usus est." Sex. Aur. Vict. ep. 35.

²⁷ V. p. 256.

²⁸ "Romanum ditiozem ad fines pristinos, varia bellorum felicitate revocavit." Eutr. 9. 9.

²⁹ "Discipline militaris, et morum dissolutorum magna ex parte corrector. Urbem Romanam muris firmioribus cinxit." Id. ib. "Muris urbem quam validissimis laxiore ambitu circumsepfit." Sex. Aur. Vict. de Cæs. 35.

³⁰ "Leges plurimas sanxit, et quidem salutares." Fl. Vop. in Aur. 35.

³¹ "Populus Romanus eum amavit, senatus timuit." Id. ib. 50.

³² "Occiditur servi sui fraude, qui ad quosdam militares viros, amicos ipsius, nomina pertulit annotata, falso manum ejus imitatus, tanquam Aurelianus ipsos pararet occidere." Eutr. 9. 9.

³³ "Aurelianum quidem multi neque inter bonos, neque inter malos principes ponunt, idcirco quod ei clementia, imperatorum dos prima, defuerit." Fl. Vop. in Aur. 44.

peaceful

peaceful walks of domestic and social life; and, though the terror of the most respectable orders of his subjects, yet, so difficult was it thought to supply his place with another of equal worth and expectations, that the imperial sceptre continued in a kind of abeyance for an interval of more than six months; while the senate and army were complimenting each other with the right of nomination ¹⁴.

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A cotemporary historian has very sensibly remarked, as a matter worthy of the highest admiration and applause, that, during the long suspense occasioned by this important event, universal harmony prevailed through every order of the community, undisturbed by the rude pretensions of any self-created tyrant: that the whole Roman world continued in a state of profound tranquillity, under the joint protection of the senate, the army, and the people: neither did they require to be kept within the line of their duty, by any particular exertions of princely, or tribunitian power; but each constituent part, as it ought in every well-regulated government, stood in proper awe of each other.—A new and astonishing instance of moderation, the memory of which ought to be preserved to the latest posterity;

¹⁴ “Quam difficile sit imperatorem in locum
“boni principis legere, et senatus sanctioris
“gravitas probat, et exercitus prudentis
“auctoritas. Occiso namque severissimo
“principe, de imperatore deligendo exercitus
“retulit ad senatum, idcirco quod nullum
“de his faciendum putabat, qui tam bonum
“principem occiderant. Verum senatus
“hanc eandem delectionem in exercitum
“refudit, sciens, non libenter jam milites
“accipere imperatores eos, quos senatus
“elegerit. Denique id tertio factum est:
“ita ut per sex menses imperatorem Roma-
“nus orbis non habuerit.” Fl. Vop. in
Aur. 40. “Interea milites, omisso prin-
“cipe, legatos statim Romam destinant, uti
“suapte arbitratu patres imperatorem deli-
“gerent. Quibus hoc ipsorum potissimum
“convenire munus respondentibus; rursus
“legiones ad eos rejiciunt. Ita utrimque
“pudore ac modestia decertabatur, rara in
“hominibus virtute, rebus præsertim hujus-
“modi, ac prope ignota militibus.” Sex.
Aur. Viſt. de Cæs. 35. “Quod post exceſ-
“sum Romuli, novello adhuc Romanæ urbis
“imperio, factum, Pontifices, penes quos
“scribendæ historiæ potestas fuit, in literas
“retulerunt; ut interregnum, dum post bo-
“num principem bonus alius quæritur, in-
“iretur; hoc post Aurelianum, habito inter
“senatum exercitumque Romanum non in-
“vido, non tristi, sed grato religiosoque
“certamine, sex totis mensibus factum est.”
Fl. Vop. in Tac. 1.

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that

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that they, who are eager in pursuit after royalty, may learn not to usurp, but to deserve it³⁵.

The present "Interregnum" afforded the several constituent powers a favorable opportunity of new-modelling the whole government, and of reducing it to whatever form they pleased. The two chief parties, which, for so many past ages, had lived in a determined state of opposition to each other, had suspended their inveterate prejudices and animosities, contending only which should most promote the common interest; neither do the people seem to have been entirely excluded from a share in the public administration. Nothing, therefore, could even have hindered the restoration of the antient commonwealth, but the necessities of the times, which required an Emperor to command their armies³⁶; who, being once chosen, would not easily be denied the other prerogatives, which custom had so long annexed to the imperial office.

Tacitus,
A. D. 275.

This polite and friendly competition ended with the election of Tacitus, a virtuous and venerable patrician; which was readily confirmed by the unanimous concurrence of the army. Though his advanced years somewhat lessened the value of so wise a choice; yet the fathers, in making it, were guided by a just sense of the prudence and mildness of his disposition³⁷; and by a full confi-

³⁵ "Ergo, quod rarum et difficile fuit, senatus populusque Romanus perpeffus est, ut imperatorem per sex menses, dum bonus quaeritur, respublica non haberet. Quae illa concordia militum? Quanta populo quies? Quam gravis senatus auctoritas fuerit? Nullus usquam tyrannus emerfit: sub iudicio senatus et militum populi quae Romani totus orbis est temperatus: non illi principem quenquam, ut recte facerent, non tribunitiam potestatem formidabant: sed (quod est in vita optimum) se timebant. Dicenda est tamen causa tam felicium morarum, et speciatim monumentis publicis inferenda ea in posteros humani generis stupenda moderatio: ut discant qui regna cupiunt, non raptum ire imperia, sed mereri." Fl. Vop. in Tac. 2.

³⁶ These were the declared sentiments of the Consul Gordianus, when he had convoked the senate for the purpose of an election: "Imperator est diligendus: exercitus sine principe recte diutius stare non potest, sed mul quia cogit necessitas." Fl. Vop. in Tac. 3.

³⁷ "Tacitus post hunc suscepit imperium, vir egregie moratus, et reipublicae gerendae idoneus." Eutr. 9. 10.

dence

dence in his abilities to support the dignity of his office. Being, likewise, well acquainted with his sentiments concerning the qualifications of that prince by whom he wished himself to be governed, they justly concluded, that he would do his utmost to realize the character, which he had most distinguished by his public approbation³⁸.

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These well-grounded hopes he fully confirmed, by a solemn declaration to the Fathers, that he would govern them in such a manner, as to convince them that he was sensible from whom he derived his authority; and would make their advice the fundamental principle of his conduct; requesting them, likewise, to give such orders, as should be worthy of themselves, of a modest-tempered army, and of the Roman people³⁹. The equity of his laws⁴⁰; the generosity of his behaviour⁴¹, the simplicity of his appearance⁴², and his care to prevent seditions⁴³, were incontestable proofs of the sincerity of his heart. And, perhaps, it will be thought not less to his honor, that he ordered the works of Cornelius Tacitus, whom he numbered among his ancestors, to be placed in all public libraries, and ten fresh copies to be made of them every year; that the liberal and manly principles of

³⁸ Such was the panegyric passed upon him by another member of the same body; "Se-
³⁹ niotem principem fecimus, et virum qui om-
⁴⁰ nibus quasi pater consulat. Nihil ab hoc im-
⁴¹ maturum, nihil properum, nihil asperum for-
⁴² midandum est. Omnia seria, cuncta gravia,
⁴³ et quasi ipsa respublica jubeat, auguranda
sunt. Scit enim qualem sibi principem sem-
per optaverit: nec potest aliud nobis exhibere,
quam ipse desideravit et voluit. Fl. Vop.
in Tac. 6.

³⁹ "Ita mihi liceat, Patres conscripti, sic
imperium regere, ut a vobis me constet
electum, ut ego cuncta ex vestra facere
sententia et potestate decrevi. Vestrum est

igitur ea jubere atque sancire, quæ digna
vobis, digna modesto exercitu, digna populo
Romano esse videantur." Id. ib. 9.

⁴⁰ "Cavit, ut servi in dominorum capita
non interrogarentur, ne in causa majestatis
quidem." Id. ib.

⁴¹ "Patrimonium suum publicavit, quod
habuit in redditibus, sestertium bis millies
octingenties." Id. ib. 10.

⁴² "Togis et tunicis iisdem est usus quibus
privatus." Id. ib.

⁴³ "Thermas omnes ante lucernam claudi
jussit; ne quid per noctem seditionis ori-
retur." Id. ib.

that discerning and patriotic historian might be perpetuated to all future generations⁴⁴.

The senate reflected, with excessive joy, upon their recovery of a right of election; they decreed public thanksgivings and sacrifices; and announced to all their distant provinces, and confederate nations, that they were now become the sovereign power: that all laws were to originate with them; that all foreign princes were to prefer their petitions to them; and that all questions of war and peace were to be regulated by their will and pleasure⁴⁵. But these rapturous hopes were soon disappointed by the premature death of this worthy prince; who either fell a sacrifice to some military conspiracy, or paid the debt to nature in the ordinary way: though it is generally agreed, that his mind was affected with the deepest concern, at the prevalence of those factions⁴⁶, which neither his example nor authority could suppress. His brother Florianus immediately took possession of the empire, as if it had been hereditary; though he well knew that Tacitus had taken a solemn oath, in presence of the senate, that he would not appoint even his own children for his successors, but would prefer some person of exemplary

⁴⁴ "Corn. Tacitum, scriptorem historiarum Augustæ, quod parentem suum eundem diceret, in omnibus bibliothecis collocari jussit: et ne lectorum incuria deperiret, librum per annos singulos decies scribi publicitus in evicis archiis jussit, et in bibliotheca poni." Fl. Vop. in Tac. 10.

⁴⁵ "Nec tacendum est et frequenter imitandum, tantam senatus lætitiā fuisse, quod eligendi principis cura ad ordinem amplissimum revertisset, ut et supplicationes decernerentur, et hecatombe promitteretur a singulis: denique senatores ad suos scriberent, nec ad suos tantum, sed etiam ad externos: mitterentur præterea literæ ad provincias, ut scirent omnes

"socii omnesque nationes, in antiquum statum rediisse rempublicam ac senatum principes legere; imo ipsum senatum principem factum: leges a senatu petendas; reges barbaros senatui supplicaturos; pacem ac bella senatu auctore tractanda." Id. ib. 12.

⁴⁶ "Nihil tamen clarum potuit ostendere, inter sextum mensem imperii morte præventus." Eutr. 9. 10. "Gessit autem, propter brevitatem temporum, nihil magnum. Interemptus est enim insidiis militaribus, ut alii dicunt, sexto mense: ut alii, morbo interiit. Tamen constat, factionibus eum oppressum, mente atque animo defecisse." Id. ib. 13.

merit:

merit⁴⁷: from whence we learn, that some right to nominate a successor was likewise acknowledged in the Emperor himself.

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But this weak and injudicious usurpation was soon extinguished by a spirited effort of the army, who, with the concurrence of the senate and people, immediately proclaimed Probus⁴⁸; a prince so happily formed by nature, as to possess within himself all the virtues, which had been the separate ornaments of his worthiest predecessors⁴⁹. In return for the many high compliments paid him by the Fathers, he indulged them with various privileges; allowing them the power of determining cases of appeal from the superior judges; of creating proconsuls; of appointing lieutenants to the consuls; of conferring prætorian power upon the governors of provinces; and of confirming by their own decrees whatever laws he should propose to them⁵⁰.

The Roman state having, from the time of its foundation, experienced every extreme, both of happiness and misery, that could well fall to the lot of mortality, began, once more, to entertain reasonable hopes of a long continuance of glory and prosperity. These flattering expectations were encouraged by feeling a revival of her

⁴⁷ "Hic frater Taciti germanus fuit, qui post fratrem arripuit imperium, non senatus auctoritate, sed suo motu, quasi hæreditarium esset imperium: cum sciret adjuratum esse in senatu Tacitum, ut cum mori cepisset, non liberis suis, sed optimum aliquem principem faceret." Fl. Vop. in Flor. 1.

⁴⁸ "Denique vix duobus mensibus imperium tenuit (sc. Florianus), et occisus est Tarfi a militibus, qui Probum audierant imperare, quem omnis exercitus legerat. Tantis autem Probus fuit in re militari, ut illum senatus optaret, miles eligeret, ipse populus Romanus acclamationibus peteret." Id. ib.

⁴⁹ "Vir domi forisque conspicuus; vir Aureliano, Trajano, Adriano, Antonino, Alexandro, Claudioque præferendus: nisi quia in illis varia, in hoc omnia præcipua tunc fuere: qui post Tacitum, omnium judicio bonorum, imperator est factus, orbemque terrarum pacatissimum gubernavit;—de quo dictum est, ut *Probus* diceretur, etiamsi *Probus* nomine non fuisset." Id. ib. 3.

⁵⁰ "Permisi patribus, ut ex magnorum judicum appellationibus ipsi cognoscerent, proconsules crearent, legatos consulibus darent, jus prætorium præsidibus darent, leges quas Probus ederet senatusconsultis propriis consecrarent." Id. in Prob. 13.

former

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former strength, under the violent but successful exertions of Aurelian; and by a well-grounded reliance upon the wisdom and vigilance of Probus, who professed to regulate every measure of his government, by the united sense of the senate and people⁵¹.

But it was the common misfortune of this unsteady and unprincipled constitution, that the virtues of princes were as much the objects of jealousy, as their vices were of detestation; and both equally exposed them to the same untimely fate. If their administration was really tyrannical, it seldom failed to draw upon them the just resentment of their oppressed subjects; if wise and equitable, it alarmed the suspicions of the lawless and profligate, who were fearful of reformation, and dreaded the exertion of a power, that was intended to correct their vices and irregularities.

Such was the cause which suddenly defeated the visionary hopes of a distempered state, now hastening towards a dissolution. The great and excellent prince, in whom these hopes were centered, having waged innumerable wars, with uniform valour and good fortune, boasted, *that he should render the army unnecessary to the state*: by which, according to the opinion of the historian, he meant no more, than, that having subdued every foreign nation from whence any danger was to be apprehended, and having restored universal peace to the empire, his subjects would have no other employment, than to cultivate the arts of humanity and social life; and the whole world would become one great republic, under the government of the Roman laws, and Ro-

⁵¹ "Ducta (sc. Respublica) per tempora,
"variis vel erecta moribus, vel afflictis, nunc
"tempestate aliqua, nunc felicitate variata,
"omnia prope passa esset, quæ patitur in
"homine uno mortalitas, videbatur post di-

"versitatem malorum jam secura, continua-
"ta felicitate mansura, post Aurelianum ve-
"hementem principem, Probo ex sententia
"senatus et populi leges et gubernacula tem-
"perante." Id. in Caro. 1.

man magistrates".—Romantic and impracticable ideas, it must be confessed; though certain indications of an heroic mind, and a virtuous heart. But the soldiery put a very different construction upon these expressions. They considered them as levelled directly at themselves: and therefore took care to cut him off in the career of his victories⁵²; not wishing for the return of those golden days, which were to commence in the ruin of their own consequence.

This desperate blow deeply affected all good men, and made them tremble at the thoughts of a successor; in whom they too justly dreaded to find the vices of the worst of their former tyrants: it being a truth not easily to be controverted, that much more is to be feared, than hoped for, from the dubious and unexplored characters of princes⁵³.

The military power from henceforward grew entirely predominant, and the senators forever lost their right of electing an Emperor; but whether from their own indolence, or from fear of creating seditions, is quite uncertain. They do not appear to have taken any pains to break through the contumelious edict of Gallienus,

⁵² "Qua causa receptis omnibus pacatissime dixisse proditur: *brevi milites frustra fore.*" Sex. Aur. Vict. de Cæs. 37. "Hic cum bella innumera gessisset, pace parta, dixit, *brevi milites necessarios non futuros.*" Eutr. 9. 11. "His addidit dictum eis grave, *si unquam eveniat salutare reipublicæ, brevi milites necessarios non futuros:*" of which declaration another historian gives the following explanation; "Quid ille conceperat animo, qui hoc dicebat? Nonne omnes barbaras nationes subjecerat pedibus? Quia totum mundum fecerat jam Romanum. *Brevi, inquit, milites necessarios non habebimus.* Quid est aliud dicere? Romanus jam miles erit nullus, ubique regnabit; omnia possidebimus, secura respublica, orbis terrarum non arma

fabricabit, non annonam præbabit: boves habebuntur aratro, equus nascetur ad pacem, nulla erunt bella, nulla captivitas: ubique pax, ubique Romanæ leges, ubique judices nostri." Fl. Vop. in Prob. 20 & 23.

⁵³ "Hinc denique magis irritati, paulo citius sextum annum apud Sirmium trucidaverunt." Sex. Aur. Vict. de Cæs. 37.

⁵⁴ "Sed ruina ingens, vel naufragii modo, vel incendii, accensus fataliter militibus, sublato e medio tali principe, in eam desperationem votum publicum redegit, ut timerent omnes Domitianos, Vitellios, et Neronos. Plus enim timetur de incertis moribus principis, quam speratur." Fl. Vop. in Caro. 1.

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which prohibited them from engaging in any military employments, though several of the succeeding reigns were very favorable to their interests; but sitting down contentedly, in the midst of ease and affluence, which they expected would be eternal, they opened a way both to the soldiers and barbarians to domineer over themselves and their posterity⁵⁵.

Diocletian,
A. D. 284.

Whatever was wanting to complete the humiliation of the senate, was effected by Diocletian; who was advanced entirely by the favor of the army, out of respect to his abilities⁵⁶; but, being himself of a very mean origin⁵⁷, he had no such natural connexion with that venerable body, as to induce him to promote its interests, or uphold its power. This Emperor is universally acknowledged to have possessed a great share of wisdom, sagacity, diligence and activity; and to have been well qualified, according to the ideas of those times, for the eminent station to which he was exalted⁵⁸. But the pride of his heart, and the insolence of his manners, tarnished the lustre of these valuable endowments.

⁵⁵ These are the observations of a concise, though sometimes very judicious, writer, who lived in the age immediately following, and, most probably, spoke from the best information: "Abhinc militaris potentia convaluit, ac senatui imperium, creandique jus principis ereptum ad nostram memoriam; incertum an ipso cupiente per desidium, an metu dissensionum odio. Quippe amisso Gallieni edicto, resciri militia potuit, cedentibus modeste legionibus, Tacito regnante, neque Florianus temere invasisset: aut judicio, manipularium cuiquam, bono licet, imperium daretur; amplissimo ac tanto ordine in castris degente. Verum dum oblectantur otio, simulque divitiis pavent, quarum usum affluentiamque aternitate majus putant, munivere militari-

"bus, ac pæne barbaris, viam in se ac posteros dominandi." *Sex. Aur. Vict. de Cæs.* 37.

⁵⁶ "Exercitus—Diocletianum imperatorem creavit." *Eutr.* 9. 13.

⁵⁷ "Dalmatia oriundum, virum obscurifime natum, adeo ut plerisque scribæ filius, a nonnullis Anulini senatoris libertinus fuisse credatur." *Id. ib.*

⁵⁸ "Ducum consilio, Tribunorumque Valerius Diocletianus domesticos regens ob sapientiam deligitur." *Sex. Aur. Vict. de Cæs.* 39. "Diocletianus moratus callide fuit, sagax præterea, et admodum subtilis ingenio, et qui severitatem suam aliena invidia vellet explere. Diligentissimus tamen, et solertissimus princeps." *Eutr.* 9. 16.

The

The generality of his predecessors, however despotic at heart, never ventured to put on any habit of dignity, except a robe of purple; studiously avoiding all other outward distinctions, which might render them objects of suspicion or envy. But Diocletian, disdainful so modest a rule, purposely affected a gorgeous and costly style of dress, peculiar only to the haughty monarchs of the East. In imitation of those detestable tyrants, Caligula and Domitian, he assumed the title of *Lord*, and caused himself to be approached with adoration, as if he had been a deity. Thus verifying a common observation, founded in the general nature of mankind, and in the experience of all ages, that such unexpected transitions from obscurity to power, have a direct tendency to vitiate the affections of these favorite sons of fortune; and to cause them to disgrace the seat of honor with an excess of pride, ambition, and insolence³⁹.

All former Emperors, when at leisure from the business of war, usually fixed their residence in the capital; where they administered justice in their own persons; enacted laws with the advice of their consistory; discharged the various duties of their respective civil offices; and added consequence and authority to the senate, by appearing always at the head of it. Thus the form of the antient republican government was in some measure preserved, though the spirit was lost. But Diocletian adopted the very reverse of this wise policy. Determined to be a monarch in appearance, as well as in

³⁹ “ Qui in imperio Romano primus regie
“ consuetudinis formam magis, quam Roma-
“ nae libertatis invexit: adorarique se iussit,
“ cum ante eum cuncti salutarentur: orna-
“ menta gemmarum vestibus calceamentif-
“ que indidit. Nam prius imperii insigne
“ in chlamyde purpurea tantum erat, re-
“ liqua communia.” Eutr. 9. 16. “ Mag-
“ nus vir; his moribus tamen: quippe qui
“ primus ex auro veste quaesita, serici ac
“ purpuræ gemmarumque vim plantis con-
“ cupiverit: quæquanquam plus quam civi-
“ lia, tumidique et affluentis animi: levia
“ tamen præ cæteris: namque se primus
“ omnium Caligulam post, Domitianumque
“ *Dominum* palam dici passus, et adorari se,
“ appellarique uti Deum. Queis rebus,
“ quantum ingenium est, compertum habeo,
“ *humillimos quosque, maxime ubi alta accif-*
“ *ferunt, superbia atque ambitione immodicos*
“ *esse.*” Sex. Aur. Vict. de Cæs. 39.

fact, he kept aloof from Rome, and is said to have never honored it with his presence more than once, during a reign of above twenty years. Carrying his legislative capacity constantly about him, he issued his edicts, which were pretty numerous, from the place of his personal abode, without waiting for the formality of the customary sanction, which, in that situation, could not conveniently be obtained.

Being thus deprived of that constitutional and necessary relation to the imperial office, which it had always hitherto enjoyed, the senate daily lost some part of its original importance; and though various traces of its legislative character are to be found in several succeeding centuries, they were but the broken and languid efforts of expiring strength; and were much more the effects of the indulgence and condescension of particular Emperors, than of the principles of its antient establishment.

The same causes occasioned the gradual disuse of the civil offices and titles, under the color of which the princes presided over the several departments of government. As some of them were local, and confined to the walls of Rome, the tribunate in particular, they could not, in their own nature, be exercised within the recesses of a distant palace. The consulship, indeed, was always excepted from the rest; but that being the highest post of honor in the old constitution, and approaching the nearest to the regal power, it continued to be a very frequent appendage to the imperial title, almost to the final extinction of the empire; as abundantly appears from the most authentic records now extant⁶⁰.

It is not to be denied, that Diocletian possessed many of the requisites which, if properly applied, might have made him a great and worthy prince: but they were like the few flowery spots, thinly scattered over a desolate plain; which cheer and relieve the eye for a

⁶⁰ Vide "Fasti Consulares;" et M. Aur. Cassiodori Chronicon.

moment, while they cause the remainder to appear more dreary and tremendous. His policy was not of that generous kind, which had for its object the happiness of his people; but was chiefly employed in rendering himself independent of the laws of his country; in detaching himself from the most respectable orders of the community; and in destroying the power of the established council of the nation, with whom, it is the interest of every wise and moderate sovereign, to preserve the most cordial and friendly connexion.

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IX.

But while he was thus gratifying his passion for despotism, at the expence of every remaining right of the Roman people, he unexpectedly drew a load upon himself, which he found his shoulders unable to bear. A vast territory, composed of an infinite variety of people, unconnected by any common tie of language, customs, or manners, could neither support itself by any mutual spirit of union or affection; nor could it lie sufficiently within the compass of his own eye, to be kept in due subjection by a mere reverence for his authority, or a dread of his arms. To these internal defects were added the numerous and formidable invasions of foreign nations; all which induced him to divide his dominions among his colleagues⁶¹; and to invest them with powers little inferior to his own, within their respective provinces. It is probable that he reserved to himself a kind of precedence or superiority over the whole, though it was more ostensible than effective. A partition of this nature necessarily broke the unity of the monarchy; gave his associates too high an idea of their own consequence, for them to submit to his control; and propagated the flames of discord and dissension among themselves and their successors, which were not extinguished till several years after his death; when the sovereignty was once more brought back into the hands of a single person.

⁶¹ "Quoniam bellorum moles—acrius an- " usque ad Ponti fretum, Galerio; cætera
" gebat; quasi partito imperio, cuncta quæ " Valerius retentavit." Sex. Aur. Vict. de-
" trans Alpes sunt, Constantio commissa: Cæf. 39.
" Africa Italiaque Herculis: Illyricique oræ,

Thus alarmed, mortified and disappointed, he determined to lay down his imperial dignity, though he had so long enjoyed it in the highest degree of splendor and opulence. The calm and steady composure with which he executed this uncommon resolution has been often extolled, as an incontestable proof of the moderation of his temper, and of his noble contempt of worldly ambition. But the tinsel charms of a crown make poor amends for its cares and anxieties. Even while in a private station, he was frequently heard to declare, that *nothing was more difficult than to govern well*⁶². These difficulties were verified by experience, and increased upon the approach of old age. Urged, therefore, by so many conspiring causes, and having, with much persuasion, prevailed upon his principal colleague, Maximian, to keep him in countenance by his example, he resigned the imperial fasces; and retired to the neighbourhood of his native city, where he ended his days in a peaceful solitude⁶³.

But this last scene of his political life, however it may have been applauded by the flatterers of his memory⁶⁴, should rather appear, in the eyes of all men of true honor, as a base desertion of his post in the

⁶² "Ego a patre meo audiui," says the historian, "Diocletianum principem, jam privatum, dixisse, *Nibil esse difficilius quam bene imperare.*" Fl. Vop. in Aur. 43.

⁶³ "Namque imminentium scrutator, ubi fato intestinas clades, et quasi fragorem quemdam impendere comperit status Romani: celebrato regni vicesimo anno valentior curam R. P. abiecit: cum in sententiam Herculum ægerrimè traduxisset: cui anno minus potentia fuerat." Sex. Aur. Viſt. de Cæs. 39. "Diocletianus vero apud Nicomediam sponte imperiales fasces relinquens, in propriis consenuit." Id. ep. 39. "Cum ingravescente ævo, parum se idoneum Diocletianus moderando imperio esse sentiret, auctor Herculo fuit, ut in vitam privatam concederent, et stationem

tuendæ reipublicæ viridioribus junioribusque mandarent. Cui ægre collega obtemperavit. Tamen uterque una die privato habitu imperii insigni mutavit. — Concesserunt tunc Salonas unus, alter in Lucaniam." Eutr. 9. 16.

⁶⁴ "Quamquam aliis alia æstimantibus veri gratia corrupta sit; nobis tamen excellenti natura videtur ad communem vitam spreto ambitu descendisse." Sex. Aur. Viſt. de Cæs. 39. "Diocletianus privatus in villa, quæ haud procul a Salonis est, præclaro otio senuit: inusitata virtute usus, ut solus omnium, post conditum Romanum imperium, ex tanto fastigio sponte ad privatæ vitæ statum civilitatemque remearet." Eutr. 9. 16.

hour of danger; a post, which it is the duty of a prince, above all others, to maintain with a courage and resolution, proportionate to the extremity of the impending evil; and to stand or fall with that country, of which he is the constitutional guardian and protector. He seems, however, to have felt himself so perfectly happy in his retreat, that when his former restless and ambitious partners earnestly solicited him to resume the government, he answered, with a truly philosophical indifference, that, could they but see the pot-herbs raised by the labor of his own hands in the gardens of *Salonæ*, they would think it a vain attempt to entice him back again to that station, in which he had heretofore experienced so little solid satisfaction “.”

Upon this famous abdication, the imperial power passed quietly into the hands of the remaining colleagues; the most material consequence of which was the establishment of a precedent for a mode of succession, by the mere personal appointment of the reigning prince, to the entire exclusion both of the senate and army; which, though not entirely new, was an open invasion of the rights of the other constituents. Nothing more was wanting to effect the ruin of the antient form of government, and to reduce the whole to one gloomy and formidable scene of monarchical despotism. Rome, now utterly deserted by her sovereigns, declined daily in her dignity and importance; and had soon the mortification to see a new rival rising into affluence and power, under the nurturing hands of her own recreant offspring.

“ Qui dum ab Herculio atque Galerio
“ ad recipiendum imperium rogaretur, tan-
“ quam pestem aliquam detestans, in hunc
“ modum respondit: *Utinam Salonæ possitis*

“ *videre olera nostris manibus instituta, pro-*
“ *fecto nunquam istud tentandum judicaretis.*”
Sex. Aur. Vict. ep. 39.

THE
H I S T O R Y
OF THE
LEGAL POLITY of the ROMAN STATE;
AND OF THE
RISE, PROGRESS, and EXTENT
OF THE
R O M A N L A W S.

B O O K IV.

The Imperial Government, from the Removal of the Seat of Empire to Byzantium by Constantine, to the Revival and Diffusion of the Roman Laws over Europe in the Twelfth Century.

C H A P. I.

The State of the Roman Government and Laws, from Constantine to Justinian.

THE history of the Roman empire, for several past ages, was, in effect, the history of the whole civilized world, as far as it was then known. It comprehended the remains of the three great monarchies, so clearly predicted by the decisive voice of holy

BOOK IV.
CHAP. I.
Fourth Period.

holy writ; and extended to the utmost western limits of what was thought the habitable earth. But this bright and magnificent image of prophetic foresight had now received its most fatal shock, from *the stone cut out of the mountain without hands*; and stood tottering upon its foot of clay¹. The surrounding nations, which, from a dread of its power, or from the hopes of its protection, had hitherto bent their knees in token of abject submission, being well assured of its present debility, prepared on all sides to revenge their former oppressions, or to enrich themselves with its spoils. The bleak and barren deserts of Scythia and Tartary poured forth their famished and hardy progeny, to seek for more comfortable habitations in the plentiful and luxurious regions of the South; where they soon laid the foundations of those kingdoms which have since given laws to the European world². Such are the events which characterise the fourth and some following centuries; and afford a most awful subject of reflexion to all those, who are disposed to entertain a just sense of the unremitting influence of Divine Providence over the affairs of the universe.

A. D. 323.

The civil broils, which had arisen from the impolitic partition of Diocletian, ended with the conquest and death of Licinius, whereby Constantine became the sole sovereign of the Roman empire³: a revolution, pregnant with many very important consequences; the most interesting whereof may be reckoned the comfortable repose, which Christianity began now to enjoy, after a long series of tyrannical and bloody persecution; and the honorable reception it obtained under the wings of the imperial power. These happy events gave an entirely new turn to the whole system of government throughout the empire; introduced a multitude of new combinations among mankind; and imprinted a new feature upon the face of civil policy in

¹ Dan. ii. 31. & seq.² "Eo modo respublica unius arbitrio geri³ V. Lowth's Comm. on Dan. c. ii. & vii. "cepit." Sex. Aur. Vict. de Cæs. 41.

general, the most striking and durable of all those, which have distinguished the constitutions of the modern from those of the ancient world⁴. C H A P.
I.

It is a misfortune, most sincerely to be lamented by all those who undertake to comment upon the events of the present period, that true learning was now so much sunk below her meridian, as to leave but a few glimmering beams, to conduct an inquisitive traveller through the dark mazes of a vast and intricate wilderness. Credulity and inattention, a quaint and barbarous style, with a want of sound erudition, were the general blemishes and disgrace of the pretenders to literature in those ages. In addition to these evils, the gall of religious prejudice, the deadly poison of historic truth, had so tinged the pens, and infected the passions, of the very best writers of both denominations; that, while the Pagans can hardly speak with common patience or decency of those princes, who were the most distinguished for their patronage of the true religion⁵; the Christians, exasperated by a deep sense of their former sufferings, treat the memory of their persecutors with a bitterness and acrimony, very inconsistent with the charitable principles of their holy profession. While the former either deride or deny the most sacred truths of the Gospel; the others, elevated by their sudden transition to a state of tranquillity and honor, are too fond of multiplying miracles, and of ascribing many fortunate occurrences to the supernatural interposition of the Almighty; who, having once

⁴ As Constantine was the first of the Roman princes, who gave a regular and permanent establishment to the Christian church, it might be expected that we should, in this place, take more particular notice of that memorable event. But, as that is more immediately connected with ecclesiastical history, it will be more proper to reserve it for the subject of a separate work, which,

among other curious matters, is designed to contain an inquiry into the origin and progress of the *Canon Law*.

⁵ Of these the principal were, Julian, whose partiality was aggravated by his apostasy; and Zosimus, whose determined bigotry made him represent as fact whatever his prejudices conceived.

BOOK
IV.

manifested his glory to the world, and established the worship of himself by signs and wonders, hath, in later times, more usually chosen to effect his gracious purposes, by the ordinary, though not less providential, operations of secondary causes⁶.

These difficulties considered, large allowances will ever be made, by a learned and indulgent world, for every attempt to elucidate the history of an age, which has been so differently represented by these writers, who, living so near the times, certainly enjoyed better opportunities of information, than their prejudices would permit them to use. Perhaps, therefore, the reader may derive more real instruction from the dispassionate remarks and deductions of the judicious and enlightened historians of modern times, than from the less accurate and impartial records of antiquity⁷.

A general
view of the
character and
actions of
Constantine.

Constantine, on his first entrance upon the scene of public life, attracted the notice of an admiring world, by a numerous assemblage of heroic accomplishments⁸; but a fondness for popular applause and military glory predominated through every part of his conduct⁹. These passions, though the springs of his noblest actions, often degenerated into their natural extremes of vanity and ambition; and, among other ill consequences, tempted him to affect the costly and

⁶ Lactantius and Eusebius have sometimes erred in these particulars; though, in general, great respect is due to their candor and veracity.

⁷ For this purpose we would wish to recommend to our reader's notice the very celebrated and valuable work of Giannone, intitled, *Istoria Civile del Regno di Napoli*; the first edition of which was published, without mutilations, in Naples, 1723. From hence, as well as from *Gotthofred's* elaborate Commentary upon the *Theodosian Code*, and from other later authors of approved character, we

have deduced a variety of useful information; our obligations for which will be gratefully acknowledged in the remaining part of this Work.

⁸ "Vir, primo imperii tempore, optimis principibus, ultimo mediis comparandus. Innumerae in eo animi corporisque virtutes claruerunt." Eutr. 10. 4.

⁹ "Fuit ultra quam aestimari potest laudis avidus." Sex. Aur. Vict. ep. 41. "Militaris gloriae appetentissimus, fortuna in bello prospera fuit; verum ita, ut non superaret industriam." Eutr. 10. 4.

gorgeous

gorgeous ornaments of royalty", and to connect the idea of sole and absolute power with the imperial dignity. Born in an age when the free spirit of old Rome had been long extinct, and seduced by the fallacious example of Diocletian and his other vicious predecessors, he perhaps mistook usage for right; and considered this customary usurpation upon the liberties of his subjects, only as an assertion of the lawful prerogatives of his station.

His passion for military fame was amply gratified by a long course of brilliant successes, earned by a most indefatigable industry, and highly merited by the merciful use he made of his victories; such as will ever distinguish the genuine hero from the savage robber. His abolition of those cruel instruments of torture, hitherto so frequently employed against the unfortunate captives, gained him the universal esteem and veneration of these barbarous nations, who re-founded his praises in strains almost approaching to adoration".

Being in full possession of the sole legislative power, by the death of Licinius, he instantly repealed all the unconstitutional edicts of that tyrant, and of his corrupt judges; at the same time confirming all their just and legitimate acts, and giving a new sanction to the antient laws, with the addition of many of his own". Several of these were equitable and politic; while some have been deemed unne-

" " Habitum regium gemmis, et caput
" exornans perpetuo diademate." Sex. Aur.
Vict. ep. 41.

" " Nam etiam Gothos post civile bel-
" lum variè profligavit, pace his ad postre-
" mum datâ, ingentemque apud barbaras
" gentes memoriam gratiæ collocavit." Eutr. 10. 4. " Denique Constantinus cunc-
" tos hostes, honore ac fortunis manentibus,
" textit recepitque; eò pius, ut etiam vetus
" veterrimumque supplicium patibulorum
" et cruribus suffringendis primus remove-
" rit. Hinc pro conditore seu deo ha-

bitus." Sex. Aur. Vict. de Cæs. 41.

" " Remotis Licinii tyranni constitutio-
" nibus et legibus, omnes sciant veteris juris
" et statutorum nostrorum observari debere
" sanctionem."—" Tyranni et judicum
" ejus gestis infirmatis, nemo per calumni-
" am, vel id quod ipse sponte fecit evertere;
" nec quod legitime gestum est."—" Quæ
" tyrannus contra jus rescriptis, non valere
" præcipimus: legitimis ejus rescriptis mi-
" nime impugnandis." Cod. Theod. 15:
14. 1, 2, 3.

B O O K
IV.

cessary, and others severe¹³; those especially which were levelled against calumny and false accusations¹⁴; crimes of so infamous and pernicious a nature, that they could not easily be treated with greater rigor than they deserved.

The same observation will apply to those laws which he enacted to put a stop to the practice of usury, now grown to an enormous and oppressive excess. This, indeed, was an evil of a very antient standing in the Roman state, which had frequently interrupted the domestic peace and happiness of individuals; had been the occasion of many dangerous popular commotions; and had generally eluded the vigilance and wisdom of the most active and careful legislatures.

Of the progress of Usury.

One principal cause, which placed this mischief so much beyond the reach of redress, was, the encouragement it received from the example of the first nobility in Rome; who used to lend money to the princes in alliance with the empire, both to keep them in a greater state of dependence, as well as to increase their own wealth. With this view, Pompey advanced such an immense sum to Ariobarzanes, king of Cappadocia, that the interest alone amounted to thirty-three Attic talents a month, equivalent in these days to six thousand pounds sterling: and even this, great as it may appear, was esteemed very reasonable for the time. Cicero affects at least to applaud the moderation of Pompey, for contenting himself with so much less than the ordinary rate, and for not calling in the principal; while the wretched monarch, having neither treasury nor revenue left¹⁵, was poor even to

¹³ " Multas leges rogavit; quasdam ex bono et æquo, plerasque superfluas, non-nullas severas." *Entr.* 10. 4.

¹⁴ " Commodissimus tamen rebus multis fuit: calumnias sedare legibus severissimis." *Sex. Aur. Vict.* ep. 41.

¹⁵ " Ei tamen (sc. Pompeio) sic nunc solvit, tricesimo quoque die talenta Attica

xxxiii. et hoc ex tributis: nec id satis efficitur in usuram mensuram. Sed Cæsar noster clementer id fert: forte caret; usura, nec ea solidâ, contentus est. Alii neque solvit cuiquam, nec potest solvere: nullum enim ærarium, nullum vestigal habet." *Cic. ad Att.* 6. 1. See also Hooke's *Rom. Hist.* 9. 8.

a proverb¹⁶, and utterly unable to satisfy the demand of a single creditor.

C H A P.
L

It would be a matter of great curiosity, to trace out the origin and further progress of these evils, together with the several historical events which were the consequences of them, and the numerous provisions made to correct them; but a disquisition of this kind would lead us too far beyond the bounds of our present design. Suffice it, therefore, to observe, that the ordinary and legal rate of interest, at most periods of the ancient constitution, was fixed at the one-hundredth part of the sum borrowed, to be paid every month; amounting to twelve *per cent.* by the year¹⁷. This remained the constant rule for several ages¹⁸; though various other modes of extortion had been invented, from time to time, to evade its force. Among the rest, it became a common custom to advance fruits, instead of coin, and to receive the interest in kind. This, however, leaving room for many scandalous oppressions, Constantine published an edict, to confirm the old law with regard to money; and likewise to limit the proportion of usury, that was to be returned in commodities, to

¹⁶ " Mancipii locuples, eget aris Cap.
" padocum Rex."

Hor. epist. 1. 6. 39,

¹⁷ This was called by the name of " *Ufura Centesima*," and likewise " *Unciaria*," which was first settled by the laws of the Twelve Tables; and if any one exacted more, he was liable to the penalty of four times the principal. " *Si quis unciario fœnore amplius fœnerasset, quadruplione luito.*" Vid. Grav. O. J. tab. iii. But, being often violated by the extortions of usurers, it was confirmed by another law, at the instance of the Tribunes, A. U. C. 396. " *De unciario fœnore, a M. Duilio, L. Mænio, tribunis plebis, rogatio est perlata: et plebs aliquanto eam cupidius scivit, accepitque.*" Liv. 7. 16.

The unrelenting severity with which this monthly interest was usually exacted, is drawn with great humor by the elegant Satirist, in the following allusion:

—" *Paulum deliquit amicus,*

" *Quod nisi concedas, habere insuavis;*
" *acerbus*

" *Odisti, et fugis, ut Draconem debitor*
" *æris;*

" *Qui, nisi cum tristis misero venere Ca-*
" *lende,*

" *Mercedem, aut nummos, unde unde ex-*
" *tricat amaras*

" *Porrecto jugulo historias, captivus ut audit.*"

Hor. Sat. 1. 3. 84, &c.

¹⁸ Vid. J. Pauli sent. 2. 14. et Calv. Lex.
Jur. in verb. *Ufura Centesima.*

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one-third of the quantity borrowed¹⁹. But, as necessity is not easily restrained within the pale of civil authority, and as avarice is ever ready to take advantage of its demands, many abuses were still practised against the indigent. This, in time, obliged the Emperor Valentinian, and his colleagues Theodosius and Arcadius, to pass a new law, whereby they revived the rigor of the Twelve Tables, and enacted, that whoever should in future receive more than the ancient legal interest, should instantly, and without delay, be fined in the quadruple value of what he had so extorted. They had even a retrospect to those who had offended before the law took place, on whom they inflicted a double penalty²⁰. These laws seem to have continued in force, without any alterations or additions, till the time of Justinian, who was still obliged to increase their number²¹, though, most probably, with as little effect.

No part of Constantine's administration is more commendable than his edicts for the collection of the public revenue, in which he has strictly prohibited the application of torture and imprisonment, the ordinary engine of terror and oppression, in use with the cruel and violent magistrates of those ages; justly thinking, that a prison was only calculated for the confinement of those, who were guilty of such crimes as were dangerous to society. But with regard to the mere debtors to the State, he directed them only to be put under a large

¹⁹ "Quicumque fruges humidas vel arentes indigentibus mutuas dederint, usurae nomine tertiam partem superfluum consequantur; id est, ut si summa crediti in duobus modis fuerit, tertium modium amplius consequantur. Quod si conventus creditor, propter commodum usurarum debitum recuperare noluerit, non solum usuris, sed etiam debiti quantitate, privandus est, quæ lex ad solas pertinet fruges; nam, pro pecunia, ultra singulas

"centesimas creditor vetatur accipere." Cod. Theod. 3. 33. 1.

²⁰ "Quicumque ultra centesimam, jure permissam, aliquid sub occasione necessitatis eruerit, quadrupli poenæ obligatione constrictus, sine cessatione, sine requie, protinus ablata redhibebit. Hi, verò, qui antea pari furore grassati, uspiam deteguntur, in duplum extorta restituant."

Ib. i. 2.

²¹ C. 4. 32. 26—30.

and

and gentle custody of a guard; and, if they persevered in their refusal of payment, their peers or fellow-citizens should then be permitted to distrain upon their goods, still observing a due proportion between the quantity of the debt, and the value of the debtor's fortune; which he considered as the most equitable method of reducing such obstinate offenders to reason²²: and, in general, he forbade all extortions, under pain of capital punishment²³. The principle of these laws would be no disgrace to a much more free and perfect government; and they have been already duly honored by the notice of former writers²⁴. But, as they proceeded from the immediate, uncontrouled will of this illustrious emperor; and amount to a much stronger and more unequivocal evidence of his genuine disposition, than can possibly be collected from the imperfect representations of any partial or ill-informed historian; they well admit to be again made an object of public attention.

However well-disposed Constantine himself might have been to perform the part of a good prince, he much injured his own reputation, by an unlimited indulgence of his ministers and fa-

²² " Nemo carcerem plumbatarumque verbera, aut pondera, aliaque ab insolentia judicum reperta supplicia, in debitorum solutionibus, vel a perversis, vel ab iratis iudicibus, expavescat. Carcer poenaliū, carcer hominum noxiorum, est officialium, et cum denotatione eorum iudicum, quorum de officio coerciti, citatiores esse debent, qui contra hanc legem admiserint: securi juxta eam transcant solutores. Vel certe si quis tam alienus ab humano sensu est, ut hac indulgentiā ad contumaciam abutatur, contineatur aperta et libera et in usus hominum constituta custodia militari. Si in obdurata nequitia permanebit, ad res ejus omnemque substantiam cives ejus accedant; solutionis obsequio cum substantiæ

proprietate suscepto. Quā facultate præbita, omnes fere credimus proniores ad solvenda ea, quæ ad nostri usus exercitus, pro communi salute, poscuntur." Cod. Theod. 11. 7. 3.

²³ " Stationariis primipilariū, quorum manifesta sunt loca, coram mandatum est, ut, si aliquid extra modum extorserint, sciant se capite puniendos." Id. 8. 4. 2.

²⁴ *General History of the World*, 2. 1. 1. 35. by Dr. Howell; a writer of the last century, of remarkable industry, learning, and fidelity, though now almost forgotten; from whose accurate examination of antient authors, not otherwise very pleasant to peruse, we have derived great assistance in this part of the present work.

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vorites; whom he suffered to plunder the provinces without restraint, and to enrich themselves with the spoils of the oppressed inhabitants²³. His indefatigable panegyrist has attempted his exculpation, by the pretence of the gentleness of his temper; as if that would not permit him to withdraw his confidence from those, who, by hypocritical professions of religion, and feigned attachments to his person, had once gained a firm seat in his affections. By a too implicit reliance upon these treacherous coadjutors, he was sometimes guilty of errors very unbecoming his dignity; which, as the Historian is unable to conceal, he endeavours to ascribe to a malignant spirit of envy, that, as it were by some preternatural influence, had thus polluted the general purity of his character²⁴. But, in spite of this forced and over-strained apology, the plain truth is, that a prince can never be too circumspect in the choice of these instruments of power; as they are the eyes by which he sees the state of his dominions, and the members by which he administers to the necessities of his subjects. If, therefore, these satellites of royalty have either weak heads, unclean hands, or corrupt hearts, he, who raised them to this unmerited eminence, is responsible for whatever mischiefs they may

²³ “Sicut in nonnullos amicos dubios, ita
“in reliquos egregius: nihil occasionum
“prætermittens, quo opulentiores eos cla-
“rioresque præstaret.” Eutr. 10. 4.
“Proximorum fauces aperuit primus om-
“nium Constantinus.” Ammian. Marcell.
16. 8. edit. Gronov. 1693.

²⁴ Thus stands the account in the palli-
ative and remarkable language of the Histo-
rian himself: Και τα της ψυχης ὁ ὡσαυτως
ως ἀρεῖ τῆς ἐν ἀνδρωποῖς τελειώσεως αὐτῶν πρὸς
πᾶσι μὴ ἠμπερινοῦν τοῖς καλοῖς ὑπερβαλλόντως δὲ
τῇ φιλαδελφείᾳ ὁ δὲ καὶ μεμνητο νομιζέσθαι τοῖς πολ-
λοῖς τῆς τῶν μοχθηρῶν ἀνδρῶν φαυλοτήτος ἵνα καὶ, ἐν
τῇ σφῆτι κακίας τῆς βασιλείας ἐπιγραφέντο ἀνέξικα-

και (αὐτῶν). Καὶ γὰρ ἐν ἀληθείᾳ, οὗο χαλεπὰ
ταῦτα κατὰ τῆς δηλωμένης τότε, χρεὼς καὶ αὐτοὶ
κατανοήσαντες. Ἐντεῦθεν ἀπληγῶν καὶ μοχθηρῶν
ἀνδρῶν τῶν πᾶσι δυνάμεων βίῳ ἀεζήσαντ'
ἀλλήλοις τῶν τῇ ἐκκλησίᾳ ἐκποδνομένων, καὶ το
χρησίων ἐπιπλεῶς σχηματίζομενοι ὅμοια. Το δ'
αὐτῶν φιλαδελφῶν καὶ φιλαγαθῶν, το, τὶ τῆς
πιστῆς εὐλαχῆς, καὶ τῷ τρόπῳ το φιλαληδῆς, ἐπὶ-
γιν αὐτοὶ αἰσινῶν τῇ σχηματῆ τῶν χρησίων πᾶσι
νομίζομενοι, αἰσινῶν τ' ἀληθῆ πᾶσι αὐτοὶ ἐπὶ πλεο-
νῶν ψυχῇ σὺν προσηνέμενοι ὡς ἑαυτοὺς πᾶσι
αἰσινῶν, ταχῶς αὖ ὥστε καὶ τοῖς μὴ πρὸς πᾶσι
αἰσινῶν. Κηλὶδα ταύτην τοῖς αὐτοῖς καλοῖς ἐπιφρο-
νός τῃ φθον. Euseb. de Vita Const. 4. 54.
edit. Par. 1659.

bring

bring upon his country, by their irregularities and misconduct.

C H A P.

I.

Among his other princely qualities, Constantine is allowed to have been a generous patron of the liberal arts, and of every branch of polite literature; to have been himself a scholar, and much devoted to study, writing, and meditation²⁷. He was very diligent likewise in giving audience to ambassadors, and in hearing complaints from the Provinces²⁸: and, notwithstanding his known partiality to his favorites, he issued an edict, earnestly inviting all those, who had suffered injustice themselves, or knew of any done to others, by his præfects, judges, or other dependents, to give full information; not only offering them security and redress, but likewise honors and rewards, for declaring the truth; and solemnly appealing to the Almighty to bear witness to the sincerity of his promises²⁹.

It was the policy of Diocletian, as formerly observed³⁰, to mortify and humble the senate; partly from an affected contempt for a body, of which he never had any pretensions to become a member;

²⁷ "Civilibus artibus et liberalibus studiis deditus." *Entr.* 10. 4. "Nutrire artes bonas, præcipue studia literarum: legere ipse, scribere, meditari." *Sex. Aur. Viç.* ep. 41. Αυτος δε βασιλευς (scilicet Constantinus) ετα την ψυχην λογικη συνουσι προηλο, ως και μιχρη τιλευτης συνιδως μι λογογραφου συνιδως δε τας προιδως ποιιδου, και τας διοκρετις τοις ακροαταις διδασκαλιας παριχιν. Νομηδιτιν δε συνιδως, τοτε μι παλιτικοις, τοτε δε τρατιντικοις πατα δε προσφορω τν των ανδρων επιου βιω. *Euseb. in Vit. Const.* 4. 55.

²⁸ "Audire legationes et querimonias provinciarum." *Sex. Aur. Viç.* ep. 41.

²⁹ "Si quis est cujuscunque loci, ordinis, dignitatis, qui se in quemcunque judicium, comitum, amicorum, vel palatino-

rum meorum aliquid veraciter et manifestè probare posse confidit, quod non integrè atque justè gessisse videatur; intrepidus et securus accedat, interpellet me, ipse audiam omnia, ipse cognoscam; et, si fuerit comprobatum, ipse me vindicabo: dicat securus, et benè sibi conscius dicat; si probaverit, ut dixi, ipse me vindicabo de eo qui me usque ad hoc tempus simulatâ integritate deceperit. Illum autem, qui hoc prodiderit et comprobaverit, et dignitatibus et rebus augebo. Ita mihi Summa Divinitas semper propitia sit, et me inco-

lumem præstet, ut cupio felicissimâ et florentissimâ republicâ." *Cod. Theod.*

9. 1. 4.

³⁰ *P.* 412.

BOOK
IV.

and, still more, with a view of depressing the only rival, which stood in the way of his absolute power. The same plan was adopted by most of his other tyrannical associates and their successors. Licinius, an illiterate Barbarian³¹, had wantonly degraded several of the senators, and had confined them to an occupation, somewhat resembling that of Commissioners of the Navy³²; whose duty it was to superintend the transportation of corn, and other provisions, to different parts of the empire, and to build ships of a given force, the districts to which they belonged furnishing materials. These, and other burthens, they were obliged to support at their own expence; and, in return, were intitled to a variety of privileges³³. People of all ranks were liable to be called upon to take this office in turn, senators only excepted. Constantine, therefore, having rescinded all the oppressive laws of Licinius, by a rescript directed to the Fathers, gave them a commission to examine the petitions of such as had been deposed by the Tyrant, and to restore them to their native rights. He empowered them likewise to elect such others, whose births, fortunes, and characters, gave them just titles to that high honor; thinking it incongruous that any other than themselves should decide upon such qualifications: but he directed that the names of the persons thus chosen should be returned to the Præfect of the City, that they might finally receive his own imperial confirmation³⁴. This seems to have been the last act of authority, which he ever exercised

³¹ His character is thus drawn by an ancient Historian: "Avaritiæ cupidine omnium pessimus; neque alienus a luxu venereo; asper admodum; haud mediocriter impatiens; infestus literis, quas, per inscitiam immodicam, virus ac pestem publicam nominabat, præcipuè forensè industriam." Sex. Aur. Vict. ep. 41.

³² They were called, as will be seen presently, "Navicularii," and sometimes "Navarchi, Naucleri, Nautici, et Profecutores." Howel, 2. 1. 8.

³³ These are enumerated at large, Cod. Theod. 13. 5 & 6.

³⁴ "Super his qui ex senatoribus ad navicularium munus a tyranno dejecti sunt," "ac

exercised at Rome in his own person; as he soon afterwards proceeded towards the East, where the foundation and establishment of his new city supplied him with ample employment for the remainder of his life.

C. H. A. P.
I.

There is great difference of opinion, concerning the motives which induced Constantine to raise up this dangerous rival against the antient metropolis¹¹. The most probable is, that, by fixing the principal active power in so convenient and eligible a spot, he hoped to be nearer at hand, both to repel the attacks of those warlike and barbarous nations which infested the northern frontiers of Thrace and Macedon, and likewise of the Persians, who were now become equally formidable enemies on the eastern quarters. But this policy, though it strengthened those parts for a time, weakened the western in the same proportion; and, in a short course of years, occasioned their total separation.

Hitherto the cottage of Romulus had been the centre of the empire. From hence issued the armies that subdued, and the laws that civilised, the world. An unshaken attachment to this venerable nursery of their ancestors, with an implicit confidence in the protection of their local deities, was the predominant character of the old Romans, and constituted the most laudable part of their superstition. The least suspicion of a design to remove from thence spread a just alarm through the whole city; and it was used as a popular topic of complaint against Julius Cæsar, that he meant to transfer the

¹¹ ac restitui suis natalibus deprecantur, placuit vestrae sanctitati iudicium examenque mandare: ut vos eligatis qui splendori vestro, patrimonii viribus, et honestate vivendi, et natalium dignitate respondent. Incongruum est enim tantæ dignitatis arbitrium alteri potius, quam vestris fragilis sententiisque committere. Eorum

autem, quos ut dignos elegeritis, nomina Præfectus Urbis nobis insinuet, ut vestrum iudicium comprobemus." Cod. Theod. 15. 14. 4.

¹² "Primus urbem nominis sui ad tantum fastigium evehere molitus est, ut Romæ æmulam faceret." Eutr. 10. 4.

feat of government to Alexandria or Ilium, having first drained Italy of its wealth and chosen bands; leaving Rome to the direction of his own adherents³⁶. Though history has left us much in the dark with regard to his real intention, it is not utterly improbable that he had it in contemplation; and that the same idea was pursued by Augustus. It is likewise supposed to have given birth to one of the most sublime and interesting odes of Horace; who, to divert his patron from so unpopular a project, had introduced the antient and determined enemy of the Trojan name, threatening the most dreadful vengeance against all such as should presume to restore those hateful and devoted walls³⁷.

But these superstitious scruples had no effect upon the mind of Constantine; who, finding the situation of Byzantium likely to answer his most sanguine hopes, extended its fortifications; adorned it with a great variety of public edifices; and spared neither expence nor labor to render it secure, commodious, and magnificent.

Having completed these additional improvements, in the space of about two years, he called it after his own name; made it the capital of the Eastern division of the empire; and instituted a senate, together with the same festivals and solemnities as were in use among the antient Romans³⁸. But, at the same time, to preserve

³⁶ "Quinetiam varia fama percrebuit, migraturum Alexandriam vel Ilium, translatis simul opibus imperii, exhaustâ que Italiâ delectibus, et procuratione urbis amicis permiscâ." Suet. in Jul. Cæs. 79.

³⁷ "Trojæ renascens alite lugubri

"Fortuna tristi clade iterabitur,

"Ducente victrices catervas

"Conjuge me Jovis et sorore."

Od. 3. 3. et Not. edit.

Delph. Par. 1691.

³⁸ Νέα Ῥώμη Κωνσταντινούπολις ὀνομασθεῖσιν καὶ βασιλεὺς κατιστήσιν τῶν ὅσων τῆν Ῥωμαίων ὑπερκοσμίαν οἰκίαν πρὸς ἀρχαίαν καὶ νόστον καὶ ἥλιον ἀνισχύον, καὶ τὰ ἐν μέσῳ πειλαγῶν, καὶ τῶν παρὰ τοὺς ἰστροὺς ποταμῶν, καὶ πεδιάδων, καὶ πρὸς τὴν Ἰωνίαν πόλιν, μαχρὴν Κερκηνῆς καὶ τῶν τῆς Λιβύης παρὰ τὸ βορρην καλῶμενοι βυλανήριον τε μέγα, ἢ συγκληθὲν ὀνομαζέμενοι, ἱεῖροι συνεστησάτω, τὰς αὐτὰς τάξας τιμας καὶ ἱερομνηστίας, ἢ καὶ Ῥωμαίοις τοὺς περιούσιους ἑδούς, ὡς παλαιὰ διὰ δεῖξαι σπουδασάς ἐφαιμύλλον τῇ παρὰ Ἰταλοῖς Ῥώμῃ, τῇ ὁμωνύμῳ αὐτῇ πόλιν, ὡς δεῖμαί τε. Sozom. Hist. Eccl. 2. 3.

an outward shew of regard for Old Rome, he made no alteration in its form of government; continuing the senate, and all other magistracies, upon much the same footing as in former times. The new city, however, daily increased under the countenance and encouragement of its sovereign; and soon excelled it in beauty, wealth, and population.³⁹

Whatever honor this illustrious prince might have derived from these numerous changes and improvements, it was greatly tarnished by some particular acts of injustice and oppression, exercised upon a son, a wife, and several of his most faithful servants; who fell, the unpitied victims of his suspicion and cruelty, by the hands of executioners and assassins⁴⁰. Shocking as these facts are in the relation, they are too well founded in truth to be denied; though it is possible that they have been much aggravated by party clamors. For it is universally known, that the passions and prejudices of the two rival religions, then prevailing, were carried to such a reproachful degree of excess on both sides, that, while the bigotted Pagan has degraded him into a tyrant, the Christian, no less zealous and injudicious, has exalted him into a saint. His memory has been loaded with a profusion both of slander and panegyric, equally false and ill-founded; and there is so general a defect of harmony in the coloring of his character, that the most accurate and impartial eye can never pass any certain judgment upon its true merit.

³⁹ Ες τοσούτων γὰρ, σὺν τῇ φαιαι, ἐπιδόκυν, ὡς καὶ τοῖς σωμασὶ καὶ τοῖς χρημασὶ μείζονα συνόμοι- γισθῆαι. Sozom. Hist. Eccl. 2. 3.

⁴⁰ "Verum insolentia rerum secundarum aliquantum Constantinum ex illa favorabili animi docilitate mutavit. Primum, necessitudines persecutus, Crispum filium, egregium virum, et fororis filium, commodæ indolis juvenem, inter-

"fecit: mox, uxorem; post, numerosos

"amicos." Eutr. 10. 4. — "Fausta con-

"juge, ut putant, suggerente, Crispum fi-

"lium necari jubet. Dehinc uxorem suam

"Faustam in balneas ardentes coniectam

"interemit; cum eam mater Helena dolore

"nimio nepotis increparet." Sex. Aur.

Viſt. ep. 41.

BOOK
IV.

But, fortunately [for the cause of truth, there is ample room, in the midst of these very wide extremes, to do justice to his virtues, without being obliged to suppress or extenuate his failings. Admitting him to have been guilty of some particular instances of oppression and cruelty, he unquestionably performed many important and meritorious services to the public at large. His laws, which were numerous, wise, and liberal, clearly prove his warm regard for the personal rights and liberties of the people over whom he presided⁴¹. By his valor and good fortune, he gave them a taste of the glory of antient Rome; and, by his prudent and humane government, restored a temporary tranquillity to the whole empire⁴².

The public adoption of a pure and divine faith, so diametrically opposite in its principles and tendency to a profane and contemptible superstition, occasioned a necessary revolution in the former system of jurisprudence; and called for a variety of new laws, to insure it respect and stability. These open to our view a boundless field of curious speculation. But, being more intimately connected with ecclesiastical history, they must be deferred to a future work; in which it will be attempted to trace out the origin, and explain the nature, of that spiritual jurisdiction, which the corrupt and haughty ministers of a meek and humble master dared to usurp over the ignorant and timid princes of the middle ages.

Suffice it, therefore, at present, to advert to those alterations, which were purely of a temporal kind; and were the more imme-

⁴¹ These laws are all preserved in the *Theodosian Code*, a work of which we shall speak more particularly hereafter; wherein they are all regularly digested according to their respective subjects; and his name is always to be found at the head of each

title to which they belong.

⁴² "Quod sanè P. R. ægerrimè tulit (sc. funus); quippe cujus armis, legibus, clementi imperio, quasi novatam urbem Romanam arbitraretur." *Sex. Aur. Vict. de Cæs. 41.*

mediate consequences of the removal of the seat of empire from its primitive centre. Not that the laws themselves, as far only as they concerned private and personal matters, underwent any very material changes, other than what daily experience, and the improving wisdom of succeeding ages, gradually and imperceptibly introduce in all polished and civilized states. But the chief difference seems to have lain in the mode of administering them. Though the emperor's cabinet had long been the only source of legislation, yet justice was still dispensed by the ordinary judges, under their original republican characters and denominations; with the reservation of a dernier resort to the prince, who was the "apex" of all judicial authority. But now the magistrates frequently changed their former appellations; or, even if they retained them, they found them united with some new office or jurisdiction⁴³. The ministers of justice were blended with those of the police, and were, consequently, too much the creatures of the emperors themselves; which confusion of the legislative with the executive power was highly dangerous, both to the lives and properties of the subject. However gently and beneficially it might have been exercised, by a just and merciful prince, it was easily converted into an instrument of injustice and terror, in the hands of a tyrant. Upon the whole, therefore, the cause of popular liberty gained no ground by the new regulations of Constantine, however happy the people in general might feel themselves from the humanity of his administration.

It has been already observed, that Hadrian had projected a reformation of the whole Roman law, but lived only to finish the *Imperial Edict*. This work stood very high in the public

⁴³ Giann. 2. 5. An account of the magistrates under this new arrangement, with the nature of their several offices and jurisdictions, are particularly described in Cod. Theod. 1. 5.—12.

BOOK
IV.Code of Pa-
pirius Justus.Reports of
Julius Pau-
lus.

esteem; and continued in force, with little variation, to the times of which we are now treating⁴⁴. But, as every succeeding prince added something to the former stock; the daily increasing bulk of the imperial laws induced some other able and judicious professors to digest them into a certain regular order, after that example. The first of these attempts was made by Papirius Justus; who flourished about the reigns of Commodus or Severus, and collected the constitutions of Verus and M. Aurelius Antoninus into twenty books⁴⁵.

In the next age, the learned and industrious Julius Paulus, already spoken of⁴⁶, compiled six books of *Decrees*, or *Decisions*, made by the emperors upon the hearing of causes⁴⁷; which, from the title, seem to answer pretty exactly to the *Reports* of adjudged cases in our modern courts of justice. Both these collections, which probably deserved a better fate, are now totally lost; except a few detached laws, disposed according to their respective subjects, in different parts of Justinian's Pandects.

The continual distractions of the empire, for the major part of the century next succeeding the death of Alexander Severus, suspended all farther improvements in the science of jurisprudence. But the tranquillity ensuing from the firm establishment of Constantine upon the imperial throne, and the attention paid by that prince himself to political reformation, probably encouraged others to exert their abilities to

⁴⁴ P. 305 and 386. Giann. 1. 9.

⁴⁵ Jac. Gothofr. proleg. ad Cod. Theod. c. 1. Hein. Hist. Jur. Civ. § 309. Giann. 1. 9. The curious reader, who is disposed to trace out the scanty relics of them, which are still preserved in the Digest, will find them all pointed out in a work intitled, *Index Legum omnium quæ in Pandectis continentur*, p. 49. per Jac. Labittum; which is deservedly commended by Giann. ut sup. both

for its utility and ingenuity. The edition here used was printed at Paris, 1557; but there are some others of a much later date.

⁴⁶ P. 393.

⁴⁷ The original title, which still exists in the Digest, is *Libri Decretorum*, al. *Imperialium Sententiarum in cognitionibus prolatarum*. Ind. Leg. Lab. p. 79. Hein. ut sup. § 343 & 347.

the same useful purposes; and produced two more highly valuable collections. S H A P.
I.

The first of these was called the *Gregorian Code*, from the author, Gregorius, or Gregorianus; who digested into order the chief, if not the whole, of the Imperial Edicts, from Hadrian down to the middle of the reigns of Diocletian and Maximian. From the fragments of these, which have been preserved by some learned antiquaries of modern times⁴⁸, they appear to relate principally to private and personal rights, and to have consisted of at least nineteen books: but many of these are entirely lost; and the rest are so few and imperfect, that it is impossible to form any just idea of the method and design of the whole. Gregorian Code.
A. D. 276.

The author of the second collection was Hermogenes, from whom it received the name of the *Hermogenian Code*; the remains of which are comprized in a very few short titles, containing only certain edicts of Diocletian and Maximian, by way, as it should seem, of a continuation of the *Gregorian*⁴⁹. Hermogenian Code.

The histories of those ages have taken but very little notice of either of these writers; so as to enable us to determine, with any degree of precision, in what time they lived, or what was the particular rank or quality of either. Some have carried Gregorius as far back as the reign of Valerian and Gallienus⁵⁰; but this supposition is clearly confuted by the numerous laws of much later princes, still extant among the fragments of his work. There is

⁴⁸ Particularly by Ant. Schultingius, in a work intitled, *Jurisprudentia Vetus Ante-Justiniana*, p. 682. Lug. Bat. 1717. For a further account, vid. Hein. Hist. Jur. Civ. § 367 & 368; et id. Proem. ad Ant. Rom. § 17 & 18: Giann. 1. 9: and likewise Taylor's Elem. p. 17. in ties, relative to the subject, are accurately given. ⁴⁹ They are to be found likewise in Schult. p. 709. Vid. et Hein. Hist. Jur. Civ. § 358 et 370: et id. Proem. ad Ant. Rom. § 19; et Tayl. ut sup. ⁵⁰ Grav. O. J. 1. 131. and the authorities by him cited.

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as much uncertainty with regard to Hermogenes: though it is probable that he was nearly a cotemporary of Gregorius, but somewhat younger; and that he reached, if not survived, the reigns of the sons of Constantine.

There can be no question, however, that both of them were eminent in the profession of the law: and they might possibly have borne some offices of dignity and trust under the government; which might have given them easier access to the records wherein the materials were deposited.

It is quite doubtful whether these Codes were undertaken by the special command of the emperors, or by the voluntary choice of the compilers. But it is certain that they were received in the public courts of justice; and that they were quoted, as authority, by the advocates and writers of that, and several subsequent ages³¹. They are likewise expressly referred to by Justinian, in the prefaces to his own Code; whereby all suitors and practitioners are prohibited, under severe penalties, from citing them, as law, for the future; such parts only excepted, as he should think proper to adopt into his new compilation³².

Gregorius is not known to have been the author of any other work, than the Code before mentioned; no part of which has been honored by the notice of Justinian³³, excepting only in his prohibition

³¹ Giann. 1. 9. who has referred to several instances of this kind.

³² "Sciant omnes, tam litigatores, quam disertissimi advocati, nullatenus eis licere de cætero constitutiones ex *veteribus tribus codicibus*, quorum jam mentio facta est, vel ex iis, quæ novellæ constitutiones ad præsens tempus vocabantur, in cognitionibus recitare certaminibus, sed solum eisdem nostro Codici insertis constitutionibus

"necesse est uti, falsi crimini subdendiis his, qui contra hoc facere ausi fuerint." Præf. de Just. Cod. confirm. § 3.

³³ Gothofred, in prol. ad C. 1. h. c. 1. § 1. has the following remark: "Ex Gregoriani vero libro 5 de nuptiis, laudatur nobilissima ma Diocletiani lex ab Authore collationis legum Mosaicarum, tit. de incestis nuptiis, 6. cujus pars extat l. 7. C. Justin. cod. tit." and in this he is implicitly followed

bition of the future use of it. Hermogenes, besides his Code, composed *Epitomes of the Law*, in six books; very considerable extracts from which are incorporated in the Digest; and likewise a treatise on *Fideicommissary Trusts*, probably in four books, from whence the emperor has borrowed no more than a single law⁵⁴.

Some very learned and judicious writers of later times have conjectured, that the lawyers of that age, most of whom still adhered to the idolatrous superstition of their ancestors, were jealous of the innovations made upon the antient system of jurisprudence by Constantine, in consequence of the establishment newly given by him to the Christian religion; and therefore, to prevent the imperial constitutions from corruption or neglect, and to preserve them entire to posterity, they took the foregoing method of reducing them into Codes⁵⁵.

But, if we can form any thing like an accurate judgment of the merits and design of these collections, from their present imperfect remains, they will be found to carry but very little internal evidence, two or three instances only excepted, of the religion of their respective authors. Their chief object seems to have been, to lay down rules for the regulation of private civil rights, independ-

by Giannone, 1. 9. But they have both fallen into a similar error; as the 7th law of Justinian's Code does not relate to the subject of incestuous marriage; but is meant to define who are *mean women*, such as senators are prohibited from marrying. The *Gregorian Law* referred to by these writers, as it stands among the fragments published by Schultingius, p. 700, is in the following words: "His, qui incestas nuptias per errorem contrahunt, ne pœnis subiciantur, ita demum clementia principum subvenit, si, posteaquam errorem suum rescierint, illicet nefarias nuptias diremerint." The

only passage which bears any relation to this, in the corresponding title of Justinian's Code, is in l. 4. from a Constitution of Valentinian, Theodosius, and Arcadius; who, speaking of the penalties to be inflicted upon such as are guilty of this crime, add: "Quos tamen ita demum legis nostræ laqueis eximi placuit, si, aut errore commisso, aut ubi ad legitimos pervenerint annos, conjunctionem hujusmodi sine ulla procrastinatione diremerint."

⁵⁴ Ind. Leg. Lab. p. 91, 92.

⁵⁵ Giann. 1. 9. Hein. Hist. Jur. Civ.

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ently of any religious consideration whatever; and, as such, not likely to excite the apprehensions or suspicions of Christian princes; who, notwithstanding their many new regulations in favor of Christianity, too often, through mere negligence, adopted the constitutions of their Pagan predecessors, though repugnant both to its tenets and interests³⁶. It is, therefore, not improbable, that these useful works were undertaken with the concurrence and encouragement of Constantine, who was a steady and generous patron of learning; and especially if it be true, as some suppose, that the compilers were men of eminence about the imperial court, and enjoyed the confidence of their respective sovereigns.

A. U. C.
337.

The unaffected and universal lamentations of the people, on the death of Constantine, carried the strongest evidence of the reality of his virtues. One of the most immediate ill consequences of this melancholy event, was, a renewal of the impolitic practice of dividing the territories among several colleagues, of which there had been already too many examples; whereby the unity of the imperial authority was broken, its strength diminished; and, for want of the spirited exertion of a sole ruling power, the whole empire was disturbed by the inroads of foreign enemies, or the pretensions of domestic usurpers. The associates themselves were likewise frequently embroiled in fatal dissensions with each other; and the laws and constitution were made the sport of military violence.

Sons of Con-
stantine.
A. D. 337.

The three sons of Constantine were proclaimed by the army joint successors to their father, and each took his separate share of the dominions³⁷; which soon produced discontents and disagreement between

³⁶ Several instances of this kind are to be seen in Goth. Proleg. ad C. Th. c. 2.

³⁷ " Quo mortuo—ad tres Orbis Romani dominatio redacta est, Constantinum, et Constantium,

between them, and ended in the death of the eldest, whose allotment reverted to the survivors, according to the customary practice upon such partitions".

C H A P.
I.

Julian, though of the family of Constantine, and educated in the principles of Christianity, was never sincere either in the belief or practice of it. Being called to the throne, upon the death of Constantius, by the voice of the army, he openly professed himself a Pagan, and took every measure in his power to restore the profane and impious worship of the primitive ages". Every act of Constantine, in favor of Christianity, he considered as an innovation upon the antient laws and customs of the empire". He treated the professors of that holy religion with divers indignities; and, though he did not go so far as to shed their blood", he expelled the bishops and clergy from the principal cities", and deprived the Christians of the benefits of a liberal education, by prohibiting the masters to teach in their respective sciences, unless they would abjure the Christian faith: a striking instance of into-

Julian.
A. D. 362.

" Constantium, ac Constantem, filios Constantini. Hi singuli has partes regendas habuerunt. Constantinus junior cuncta trans Alpes: Constantius, a freto Propon-tidis, Asiam atque Orientem: Constans, Illyricum Italiamque et Africam, Dalmatiam, Thraciam, Macedoniamque et Achaïam." Sex. Aur. Vict. ep. 41.

" Constantinum, bellum fratri inferentem, et apud Aquileiam inconsultius proelium aggressum, Constantis duces interemerunt. Ita respublica ad duos Augustos redacta est." Eutr. 10. 5.

" Et quanquam a rudimentis pueritiæ primis inclinatio erat erga numinum cultum, paulatimque adolescens desiderio rei flagrabat, multa metuens tamen, agitabat quædam ad id pertinentia quantum fieri

" poterat occultissimè. Ubi vero, abolitis quæ verebatur, adesse sibi liberum tempus faciundi quæ vellet advertit, sui pectoris patefecit arcana; et, planis absolutisque decretis, aperiri templa, arisque hostias admoveri ad deorum statuit cultum." Amm. Marc. 22. 5.

" Giann. 2. 5.

" Religionis Christianæ adfectator, perinde tamen, ut cruore abstinere." Eutr. 10. 8. — Επει γὰρ ἐκ παλίου τρόπου διδοκίον αὐτῷ συγγραφῆαι τοὺς Ἕλληνας βιάζεσθαι μὴ ἢ τιμωρεῖσθαι τὴν δημοῦς μὴ θιλοῦντας θύειν ἀβυστίας προμακίον. Soz. Hist. Eccl. 5. 15.

" Τὸς δὲ κληρικῶς καὶ τοὺς πρεσβυτέρους τῶν ἐκκλησιῶν ἐπιλαυνεῖν τῶν πόλεων ἰσχυροῦσι. Soz. Hist. Eccl. 5. 15.

lerant

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lerant zeal, which could not escape the censure even of his devoted Panegyrist⁶³. The same learned writer very candidly owns, that he was a much stricter observer of the ceremonies, than of the substance, of religion; that his piety, such as it was, chiefly displayed itself in spilling the blood of innumerable herds of innocent cattle; inasmuch, that, had he returned alive from his Parthian expedition, he would hardly have found victims sufficient to have satisfied his mistaken devotion⁶⁴.

On the other hand, to take him in the most advantageous light possible, if philosophy, unanimated by true piety, if a severe exercise of the merely moral virtues, without reference to any divine obligation, can atone for a perverse defection from the sublime truths, in which he had been educated from his youth; it would be high injustice to his memory to deny him a place among the most accomplished characters of his age⁶⁵. In the infliction of punishments, he was severe without cruelty; and oftener threatened the sword than used it⁶⁶. With regard to senators, accused of capital offences; out of compliment to the prince, as being one of the number, they were permitted to enjoy their full liberty till after

⁶³ " Illud inclemens, quod docere vetuit
" magistros rhetoricos et grammaticos Chri-
" stianos, ni transissent ad numinum cultum."
Amm. Marc. 25. 4. — Τὴν Κρίστανος Ἑλλη-
νης παιδίας μετὰ τὴν ἐκβολήν. Socr. Hist. Eccl.
3. 16.

⁶⁴ " Cultus numinum superstitiosus." Sex.
Aur. Vict. ep. 43. — " Superstitiosus magis
" quam sacrorum legitimus observator, in-
" numeras sine parcimonia pecudes mactans:
" ut æstimaretur, si revertisset de Parthis,
" boves jam defuturos." Amm. Marc.
25. 4.

⁶⁵ " Æquaverat philosophos et Græcorum
" sapientissimos." Sex. Aur. Vict. ep. 43. —

" Cum enim sint, ut sapientes definiunt,
" virtutes quatuor præcipuè, Temperantia,
" Prudentia, Justitia, Fortitudo, eisque ac-
" cidentes extrinsecus aliæ, scientia rei mi-
" litaris, auctoritas, felicitas, atque libera-
" litas: intento studio coluit omnes ut fin-
" gulas." Amm. Marc. 25. 4.

⁶⁶ " Quibus autem justitiæ inclaruit bo-
" nis, multa significant. Primò, quod erat
" pro rerum et hominum distinctione sine
" crudelitate terribilis; deinde, quod pau-
" corum discrimine vitia cohibebat; tum
" autem, quod minabatur ferro potius quam
" utebatur." Id. ib.

they

they were tried, and convicted, and degraded from their rank⁶⁷. But, as this lenity rather bordered upon imprudence, and gave too frequent opportunities to traitors, and other notorious offenders, to escape the just rewards of their crimes, this indulgent part of the law was afterwards omitted by Justinian⁶⁸.

C H A P.
I.

Julian was very exact and punctual in the administration of private justice; and frequently presided in his own Consistory, surrounded and assisted by his great officers of State⁶⁹. His laws, in general, when not dictated by religious prejudice, are sensible and politic⁷⁰; and have been adopted, in some instances rather too indiscriminately, into the Codes of his successors⁷¹.

The cause of idolatry expired with Julian: and from henceforward Christianity resumed her empire, under the protection of the succeeding princes, who gloried in the title of its patrons and defenders; though not always so deeply tinctured with its doctrines, as to understand or promote its true interests. All of these, to the younger Theodosius, however different in their personal characters, pursued the same plan of government that was settled by Constantine. They continued, as usual, to issue their edicts, many of which were generally well suited to the occasions that required

⁶⁷ "Jus senatorum et auctoritatem ejus ordinis, in quo nos quoque ipsos esse numeramus, necesse est ab omni injuria defendere. Si quis ergo senator socius criminis infirmulatus fuerit, ante causæ cognitionem, omni terrore calumniæ, omni suspicionis molestiâ careat, vacuus sit prorsus et liber, antequam, re convictâ, crimen agnoscat et exuat dignitatem." C. Th. 9. 2. 1.

⁶⁸ C. 12. 1. 8.

⁶⁹ The following curious Law, or rather Notarial Act, shews the persons of which this court was generally composed. Pars actorum habitorem apud imperatorem Ju-

lianum Augustum, Mamertino et Nevittiano Coss. x. Kal. April. Constantinop. in Consistorio, adstante Jovio, viro clarissimo, Quæstore; Anatolio, Magistro Officiorum; Felice, Com. S. L. &c. Imp. Julianus dixit: Then follows the Imperial Decree, in Greek: Τηικαντα γραμματια μεγαλην ισχυν ιχνη, οταν περι αυτων των γραμματιων μη αμφισβητησις εξ αλλων εφειλε βεβαιουεσθαι. C. Th. 11. 39. 5.

⁷⁰ "Jura condidit non molesta, absolute quædam jubentia fieri vel arcentia, præter pauca." Amm. Marc. 25. 4.

⁷¹ Hein. Hist. Jur. Civ. § 373.

them;

B O O K
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state of
Jurispru-
dence.

them; though the antient elegance and conciseness of the legislative style were too often involved in a verbose and ostentatious display of imperial consequence.

The confusions of the Roman Empire, the fluctuating state of the government, and the daily encroachments of arbitrary power, had thrown a languor over the liberal arts and sciences, and had reduced every branch of polite learning to a general decline. Jurisprudence suffered equally with the rest; and, from having been the favorite occupation of the first orators and statesmen, in the most flourishing ages both of the republic and monarchy, at least as far as the time of Alexander Severus, was now consigned over to the most illiterate and contemptible plebeians, and liberated slaves⁷³.

In the more liberal and disinterested ages of the republic, the chief advantages derived from the practice of the law, were, honor, applause, and the heart-felt satisfaction of employing great and refined talents in defence of the poor, the ignorant, and the oppressed. Mere fame, however, being found a very insufficient recompense for the daily fatigues both of the mind and body, it soon became an object of private lucre. Perhaps, likewise, the practitioners began to conceive too high an idea of their own importance; and to set so great a value upon their own services, that the indigent were often obliged to yield up their rights to the rapacious demands of the rich, for want of ability to purchase the assistance of a skilful advocate. Some similar abuse most probably gave occasion to the famous law of M. Cincius Alimentus, the Tribune, so early as the

⁷³ Hein. Hist. Jur. Civ. § 375. — “ Juris civilis scientia; quæ Manlios, Scævolas, Servios, in amplissimum gradum dignitatis evexerat, libertorum artificum dicebatur. — Itaque omne studium pecuniæ coacervandæ. Tanto enim vir quisque melior, quanto pecuniosior.” Cl. Mam. pan. 11. c. 20.

times

times of the Second Punic War, which was intended to revive the primitive custom of gratuitous advocacy".

C H A P.

I.

Though this Law kept up the dignity of the profession, and preserved it in very honorable hands for several ages afterwards, it was far from producing the whole of the intended effect. Some of these orators, as before, turned their patronage to good profit; while others, more delicate, satisfied their scruples by the acceptance of a substantial present, in lieu of money. This seems to be owned by Cicero himself, in one of his epistles to Atticus, where he speaks, in a jocular manner, of receiving some books, which he had been advised would not be considered as a breach of the Cincian Law⁷³. Such pitiful evasions were not likely to remedy the abuse; which still continuing to increase, in the age immediately succeeding, Augustus procured a decree of the senate, to prohibit every kind of reward, under penalty of the quadruple value⁷⁴.

A. U. C.
737.

Thus stood the Law till the time of Claudius; when a new tide of grievances broke in upon the constitution, under the connivance of the imperial power; among which, none afforded so just a ground of complaint, as the venality and perfidy of advocates. A remarkable case of a Roman knight, who had put an end to his own

A. D. 46.

⁷³ This Law is well known, and frequently taken notice of, by later historians; as will be seen presently. We have no clear account of the immediate cause of its being enacted; neither does Livy say a word concerning it, though he has occasion to speak of Cincius himself, lib. 29. c. 20: and the only reference to it, that I have been able to find in that author, is put into the mouth of Cato the Censor, 34. 4: and this rather relates to another branch of it, not now in contemplation. It is alluded to in the same oblique manner by Cicero: "Cofs. Tudi-

tano et Cethego, cum quidem ille admotum senex, suator Legis Cinciae de donis et muneribus fuit." De Sen. 4.

⁷⁴ "Nunc (ut ad rem meam redeam) L. Papirius Pætus, vir bonus, amatorque noster, mihi libros eos, quos Servius Claudius reliquit, donavit. Cum mihi, per legem Cinciam licere capere, Cincius amicus tuus diceret, libenter dixi, me accepturum, si attulisset." Cic. ad Att. 1. 20.

⁷⁵ Καὶ τὸς ῥητορας ἀμισθὶ συναγορεύουσιν ἢ τι τραπλάσιον ὅσους αὐτὸν λαβόντων ἐκτιμῇ, ἐκτελεστέ. Dio Cass. 54. 18.

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life,

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life, through grief and disappointment, on finding himself betrayed by one of them, to whom he had given an enormous sum of money, so alarmed the senators, that they instantly called out for a revival of the Cincian Law⁷⁶.

The arguments in support of the motion chiefly turned upon the generous practice of former ages; upon the indignity offered to the first of all the liberal sciences, by degrading it into a lucrative employment; and on the danger of making disputes and enmities perpetual⁷⁷. On the other hand, it was urged, that honor, without profit, was of little consequence to those, who had no pretensions to the notice of posterity; that the qualifications necessary to form an advocate required much study and attention, which obliged them to neglect their own family concerns; and, if the rewards of their industry were withheld, the profession itself would be utterly disregarded⁷⁸.

The reasons were very plausible on both sides; and the result was, that the senate made a decree, with the mediation and consent of the emperor, whereby permission was given to receive fees, the quantity being limited to ten sesterces: and whoever should

⁷⁶ "Cuncta legum et magistratuum munia in se trahens princeps, materiam prædandi patefecerat. Nec quidquam publicæ mercis tam venale fuit, quam advocatorum perfidia: adeo ut Samius, insignis eques Romanus, quadringentis nummorum millibus vilio datis, et cognita prævaricatione, ferro in domo ejus incubuerit. Igitur incipiente C. Silio Consule designato, — confurgunt Patres, legemque Cinciam flagitant; quâ cavetur antiquitus, ne quis ob causam orandam pecuniam donumque accipiat." Tac. Ann. 11. 5.

⁷⁷ "Veterum oratorum exempla referens,

"qui famam in posteros præmia eloquentiæ cogitavissent pulcherrima. Alioquin et bonarum artium principem fordidis ministeriis fœdari. . . . quod si in nullius mercedem negotia tueantur, pauciora fore: nunc inimicitias, accusationes, odia, et injurias foveri." Id. ib. c. 6.

⁷⁸ "Neque tamen eloquentiam gratuito contingere: omitti curas familiares, ut quis se alienis negotiis intendat. — Nihil a quoquam expeti, nisi cujus fructus ante providerit. — Sublatis studiorum pretiis, etiam studia peritura, ut minus decora."

Id. ib. c. 7.

presume

presume to take more, incurred the penalties of the laws against bribery".

C H A P.
I.

This permission was renewed, in general terms, under Nero⁷⁹. But, in the time of Trajan, an attempt was made to introduce a new regulation, upon the following occasion. Pliny the younger, happening to be defendant in a cause, made his appearance according to the usual form; but found the court adjourned by Nepos the Prætor, who had proposed an *Edict*, to oblige all the litigants to take an oath, that they had neither advanced, promised, or given security for, any fees to advocates, previous to the commencement of the suit. All these, and many more, were included within the prohibitions of the decree of the senate under Claudius; but when the business was finished, they were allowed to receive the reward settled by that law⁸⁰.

Though the lawyers thus condescended to make a trade of their eloquence, yet their pride would not permit them to depreciate the value or merit of their services, by considering themselves in the light of hirelings, and by disgracing their gains with the mean and illiberal name of *wages*⁸¹; but they were pleased to dignify them by the more respectable title of *presents*, or *gratuities*; such as they might very honorably accept, though they could not legally de-

⁷⁹ "Hæc ita haud frustra dicta princeps
"ratus, capiendis pecuniis posuit modum,
"usque ad dena sestertia, quæ egressi repe-
"tundarum tenerentur." Id. ib.—The
Sestertium contained 1000 *Sestertii*, worth
about 8*l.* 1*s.* 5½*d.* sterling; so that the fee
ascertained by this law would amount to
about 80*l.* 14*s.* 7*d.* Vid. Ainsworth's Dict.
Table of Roman Coins.

⁸⁰ "Litigatores pro patrociniis certam
"justamque mercedem darent." Suet. in
Ner. 17.

⁸¹ This account is given by Pliny him-
self, in an epistle to his friend Rufus.

"Causa dilationis, Nepos Prætor, qui legi-
"bus quærit. Proposuerat hoc edictum;
"admonebat accusatores, admonebat reos,
"executurum se quæ SC. continerentur.
"Suberat edicto SC. hoc. Omnes, quicquid
"negotii haberent, jurare prius quam agerent
"juebantur, nihil se ob advocacionem cui-
"quam dedisse, promississe, cavisse. His enim
"verbis, ac mille præterea, et venire ad-
"vocaciones et emi vetabantur. Peractis
"tamen negotiis, mittebantur pecuniam
"duntaxat decem millium dare." Plin.
Epist. 5. 21.

⁸² "Mercedes." D. 50. 13. 1. pr.

mand⁵³. These are the doctrines laid down by the famous Ulpian; and yet, notwithstanding an affected disavowal, he permits the judges to determine concerning the fees of advocates, in proportion to the importance of the suit, the abilities of the pleader, and the style of the court, provided he does not exceed the sum specified by law⁵⁴; which, according to the liberality, or extravagance, of those times, was an hundred "aurei" for each cause⁵⁵.

Whether the emoluments accruing to the profession of the law made it more or less honorable in itself, is a matter of speculation, which it might be thought unbecoming an humble member of the same order to determine. By the opportunities it afforded of accumulating wealth, it certainly gave great weight and consequence to its professors; and, upon one celebrated occasion, when the imperial throne was put up to public auction, enabled an eminent practitioner to out-bid all his competitors⁵⁶. It did not indeed derive any credit from this circumstance, nor from the personal character of Julian himself; yet, while it continued to be exercised by men of rank, probity, and education, it was the terror of the wicked, the protection of the virtuous, and the main pillar of the constitution. As such, the professors were held in the highest esteem; were admitted to the friendship of those princes, who best understood the true principles of government⁵⁷; and were indulged with many transcendent privileges and immunities.

But

⁵³ "Est quidem res sanctissima, Civilis Sapiencia; sed quæ pretio nummario non fit. *affimanda nec debonestanda*, dum in iudicio honor petitur, qui in ingressu sacramenti efferri debuit: quædam enim tametsi honestè accipiuntur, inhonestè tamen petuntur." D. 50. 13. 1. 5.

⁵⁴ In *honorariis* advocatorum ita versari iudex debet: ut pro modo litis, proque advocati facundia, et fori consuetudine, et

iudicii, in quo erat acturus, æstimationem adhibeat; dummodo licitum *honorarium* quantitas non egrediatur." Ib. § 10.

⁵⁵ "Licita autem quantitas intelligitur pro singulis causis, usque ad centum aureos." Ib. § 12.—An "aureus" amounts to about 1 l. 4 s. 5 ½ d. sterling. Ainsw. ut sup.

⁵⁶ Vide p. 325.

⁵⁷ Thus, even in the times of degeneracy, we find them spoken of in terms of great veneration.

But, as it was now converted into a lucrative employment, it too often excited a false spirit of emulation in the acquisition of wealth; and, by falling in the way of mean, avaritious, and profligate persons, became the source of infinite mischiefs and oppressions to the innocent and peaceable subjects; which obliged succeeding princes to keep a watchful eye over their conduct, and to restrain them, as far as was possible, within the bounds of honesty and decorum.

As many of these restrictive laws do no small honor to the wisdom and justice of their respective authors, and are, in fact, received into the freest constitutions of the modern world, it may not be improper to recall them to the notice of the learned reader. Among these are the following of Constantine, which prohibited advocates bargaining with their clients for a share of the matter in controversy³³; and from drawing them into any other iniquitous bargains, whereby, in return for their assistance, they plundered them of the best part of their property. These offences were punished

meration by the emperors Leo and Anthemius, which Justinian has been pleased to preserve: "Advocati qui dirimunt ambigua fata causarum, suæque defensionis viribus in rebus sæpe publicis ac privatis lapsa erigunt, fatigata reparant, non minus provident humano generi, quam si proeliis ac vulneribus patriam parentesque salvarent. Nec enim solos nostro imperio militare credimus illis, qui gladiis, clypeis, et thoracibus nituntur, sed etiam advocatos: militant namque causarum patroni, qui gloriose vocis confisi munimine, laborantium spem, vitam, et posteros defendunt." C. 2. 7. 14. And again, "Laudabile, vitæque hominum necessarium, advocationis officium, maxime principalibus præmiis oportet remunerari." C. 2. 8. 4.

³³ This offence was called "*Pañum de quota litis*," and is thus described: "Si qui advocatorum existimationi suæ im-

menfa atque illicita compendia prætulisse sub nomine honorariorum ex ipsis negotiis, quæ tuenda susceperint, emolumenta sibi certæ partis cum gravi damno litigatoris et deprædatione poscentes fuerint inventi: placuit ut omnes, qui in hujusmodi sævitate permanerint, ab hac professione penitus arceantur." C. 2. 6. 5.

This was a law of Constantine: "Advocatos, qui consceleratis depectionibus suæ opis egentes spoliant atque denudant, non jure causæ, sed fundorum, pecorum, et mancipiorum qualitate rationeque tractata, dum eorum præcipua poscunt coacta sibi pactione transcribi, ab honestorum cætu, judiciorumque conspectu segregari præcipimus." C. Th. 2. 10. 1. et Goth. ibid. These laws bear a near relation to those of the English constitution against *Barrettry*, *Maintenance*, and *Champerty*. Blackst. Comm. 4. 10.

by

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by perpetual exclusion from all courts of justice; and by declaring them unworthy of being received into the society of men of honor and character.

In consequence of the great encouragement they received from the government, they were considered as a kind of honorable servants of the public, and lay under several correspondent obligations. A party in suit, therefore, had a right to their assistance; and, if he could not otherwise obtain it, he was at liberty to apply to the judge, who was bound on his part to nominate a counsel, and oblige him to undertake the cause, under pain of suspension from the exercise of his profession, without the possibility of being ever restored to it⁸⁹. Though this law takes no express notice of those whose poverty will not enable them to purchase assistance, it certainly must mean to include them: neither can such an obligation ever be deemed a hardship by any practitioner that has the least spark of liberality; whose ample gains by the generosity of the opulent make it his duty to pay this tribute of charity to the necessities of the poor.

The study of eloquence was one of the most favorite pursuits of the antient Romans, and was generally preferred to the more solid and instructive science of jurisprudence⁹⁰; though they both often met in the same person, and, thus united, formed the most accomplished characters in the state. But the greater the influence of this delusive faculty over the minds of an audience, the greater the danger. The construction of the Roman courts of judicature, even in

⁸⁹ "Si quis monitus a iudice, ea excusatione, quæ nequeat comprobari, cuicumque parti patrocinium denegaverit, careat foro: sciat etiam nunquam sibi ad agendum copiam posse restitui." C. 2. 6. 7. This law seems to be the origin of a very frequent practice in the Ecclesiastical Court, where parties appearing in *Forma Pauperis*, and taking the usual oath in such cases, have a

right to demand an appointment both of an Advocate and Proctor, who are bound to undertake the cause without fee or reward. V. Ough. Ord. Jud. tit. 49.

⁹⁰ "Quis unquam dubitavit, quin in re publica nostra primas eloquentia tenuerit semper, urbanis pacatisque rebus: secundas, juris scientia?" Cic. Orat. 41.

the purest times of the constitution, was but ill calculated for the promotion of strict and impartial justice: and there was always more room to play upon the passions of the judges, than to prevail over their reason. The fascinating powers of a sprightly imagination, and a voluble tongue, often carried all opposition before them, while formal argument failed of making the least impression. Even Cicero, who best understood the use of these arts, and practised them with the most unbounded success, considers it as the worst kind of bribery and corruption, to exert them in imposing upon the conscience of a judge; whose prudence will ever be more upon its guard against an open tender of money, than his mind against the specious insinuations of false oratory⁹¹.

As polite literature and pure taste gradually declined, in proportion as the government grew more oppressive and irregular, loquacity and prolixity took place of true eloquence and just argumentation⁹². The merit of a judicial harangue depended more upon the strength of the advocate's lungs, and the effrontery of his countenance, than upon the solidity of his reasons, or the goodness of his cause.

From hence the transition was very easy to petulance and ribaldry; which were now grown to such an enormous excess, as to destroy that gravity and decency which are essential to every court of justice. To remedy this evil, the emperor Valentinian and his colleagues published an edict, whereby advocates were expressly enjoined to abstain from all abusive and opprobrious language; which could only bring a disgrace upon their own characters, without

⁹¹ "Quarum artium scævitate, ut Tullius
" adseverat, nefas est religionem decipi ju-
" dicantis. Ait enim: Cumque nihil tam
" incorruptum esse debeat in republica quam
" suffragium, quam sententia; non intelligo
" cur qui ea pecunia corruerit, pœna dignus
" sit: qui eloquentia, laudem etiam ferat.

" Mibi quidem hoc plus mali facere videtur,
" qui oratione, quam qui pecunia judicem cor-
" rumpit; quod pecunia corrumpere prudentem
" nemo potest; dicendo potest." Amm. Marc.
30. 4.

⁹² "Eloquentiam inanis quædam imita-
" tur fluentia loquendi." Id. ib.

doing

doing the least service to the cause of their clients": a law, which points out, in the clearest manner possible, how much this once honorable profession was declined from its primitive dignity.

In the state of degeneracy to which it was now reduced, it was like the sword in the hands of a ruffian, to be used only for the purposes of violence and oppression. While the emperors themselves presided in the courts of justice, they kept these rapacious banditti in some degree of restraint and awe. Valens, in particular, a prince of a rigid and severe temper, was so fond of this part of his office, that his courtiers and dependents, dreading the effects of a power which was a perpetual check upon their iniquities, combined to draw off his attention from this important object; and, by artfully taking advantage of his pride and weakness, persuaded him to desist; under the idea of its being beneath the dignity of his station to interfere in the trifling and uninteresting disputes of private people. Thus was the door at once opened to every kind of corruption and rapine. The judges and advocates having but one interest in view, and finding the only obstacle removed, readily concurred in passing such sentences as were most likely to satisfy their avaritious wishes; and soon raised themselves to wealth and honors upon the plunder and ruin of the miserable and unwary litigants⁹³.

The

⁹³ "Ante omnia autem universi Advocati ita præbeant patrocinium jurgantibus, ut non ultra quam litium poscit utilitas, in licentiam conviciandi et maledicendi temeritatem prorumpant: agant quod causa desiderat, temperent se ab injuriâ. Nam si quis adeo procax fuerit, ut non ratione, sed probris putet esse certandum, opinionis suæ imminutionem patietur; nec enim conniventia commodanda est, ut quisquam negotio derelicto in adversarii sui contumeliam aut palam pergat, aut subdole." C. 2. 6. 6. 1. It might be

well if this sensible and polite law were transcribed into the first page of every practical lawyer's common-place book in the world.

⁹⁴ This account is given by an author who was an eye-witness of the abuses he so feelingly describes. "In Eois partibus alto externorum silentio, intestina perniciēs augebatur per Valentis amicos et proximos, apud quod honestate utilitas erat antiquior. Navabatur enim opera diligens, ut homo rigidus audire cupiens lites, a studio judicandi revocaretur, metu ne ita, ut Juliani temporibus

The needy and insatiable retainers of the law beset the houses of the wealthy, like dogs in search of prey: they terrified and oppressed the widows and orphans; propagated the flames of dissension between the dearest and most affectionate friends; which, contrary to the nature of other evils, acquired strength and stability by length of time, and entailed hatred and animosity upon many succeeding generations. By the further aid of false eloquence and insidious sophistry, they perverted the natural course of justice; and exulted in the triumph which their own craft and chicanery had obtained over truth and equity".

C H A P.
I.

When the monarchical government had once gained a firm and permanent footing, it was soon followed by a distinction of interests between the prince and the state, and, of consequence, by a distinction of revenues. Such as were appropriated to the general expences of the public, were considered as the property of the community at large, and were deposited in the *Treasury*³⁰: such as were for the support only of the imperial household were the pri-

Procurators
of the Revenues.

" temporibus defensione innocentia respirante, frangeretur potentium tumor, affumpta licentia latius solitus evagari. Ob hæc et similia concordi consensu dehortantibus multis,—ille ad humiliandam celsitudinem potestatis negotiorum examina spectanda instituta esse arbitratus, ut monebat, abstinuit penitus, laxavitque rapinarum fores: quæ roborantur indices judicium advocatorumque pravitate sententium paria: qui tenuiorum negotia militaris rei rectoribus, vel intra palatium validis venditantes, aut opes, aut honores quæsiwere præclaros." Amm. Marc. 30. 4.

" At nunc videre est per Eoos omnes tractus violenta et rapacissima genera hominum per fora omnia volitantium, et

" subsidantium divites domos, ut Spartanos canes aut Cretas, vestigia sagacius colligendo, ad ipsa cubilia pervenire causarum. In his primus est cæsus eorum, qui seminando diversa jurgia per vadimonia mille jactantur, viduarum postes et orborum limina deterentes, et aut inter discordantes amicos aut propinquantibus vel affines, si simultatum leviter senserint receptacula, odia struentes infesta: in quibus ætatis progressu non ut aliorum vitia intepescunt, sed magis magisque roborantur: inter rapinas insatiabiles inopes, ad capiendam versutis orationibus judicium fidem, quorum nomen ex justitia natum est, ficam ingenii destringentes." Amm. Marc. 30. 4.

" Ærarium," το δημόσιον

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vate property of the emperor, and belonged to the *Exchequer*". These were administered by certain persons called *Procurators*; whose duty it was to collect the tributes, taxes, forfeitures, with all other parts of the public income, and to account for them at their respective offices".

Officers of this kind were necessary, and well known, in every period of the Roman government. Under Augustus they received several new regulations: they were invested with a judicial power, and their decrees, as far as related to the purposes of their appointment, were as binding as those of the Roman magistrates". These received further augmentation from Claudius, who allowed them the same force and validity as if they had proceeded immediately from himself, and caused them likewise to be confirmed by a decree of the Senate⁹⁷. But as these powers, from their very nature, were liable to great and frequent abuses, the humane prince Alexander Severus, when he nominated any persons to that office, pub-

⁹⁷ "Fiscus," το βασιλικον ταμειον.—The English terms we have here used do not mark out the distinction so precisely as could be wished; but as they approach the nearest to the meaning of the Latin or Greek words, and are the best accommodated to the ideas of an English reader, we shall hope to be excused the application of them. But the two offices are clearly distinguished from each other in a variety of passages of the antient historians, of which the following may serve as examples: "At fortasse non eadem se-
" veritate *Fiscum* qua *Ærarium* cohibes;
" imo tanto majore, quanto plus tibi licere
" de tuo, quam de publico credis." Plin. Pan. ad Traj. "Damnatorum bona in
" *Fiscum* *privatum* redigi vetuit, omni sum-
" ma in *Ærario Publico* recepta." Spart. in Hadr. 7.

⁹⁸ From hence they are frequently styled

"Rationales," Accountants. Thus says a more modern Commentator: "Hocce Pro-
" curatores Cæsaris, et Fisci eisdem fuisse
" non ambigo, qui et alio nomine *Ratio-*
" *nales*, et Procuratores Patrimonii appel-
" lantur." Alciatus de Magist.

⁹⁹ "Divus Augustus apud equestres qui
" Ægypto præsiderent lege agi, decretaque
" eorum proinde haberi jussit, ac si ma-
" gistratus Romani constituisent: mox alias
" per provincias, et in urbe pleraque con-
" cessa sunt, quæ olim a Prætoribus nosce-
" bantur." Tac. Ann. 12. 60.

¹⁰⁰ "Eodem anno sæpius audita vox prin-
" cipis, parem vim rerum habendam a pro-
" curatoribus suis judicatarum, ac si ipse
" statuisset. Ac ne fortuito prolapsus vi-
" deretur, Senatus quoque consulto cautum
" plenius quam antea et uberius." Tac. Ann. 12. 60.

lished their names, inviting the people in general to declare whatever objections they knew to their characters¹⁰¹; and, considering the office itself, how uprightly soever it might be executed, only as a necessary evil, he limited the duration of it to one year¹⁰².

C H A P.

I.

Till the time of Hadrian, the whole business of the revenue, and the questions of right arising thereupon, were solely vested in the hands of the Procurators. But this wise prince, thinking them of too vast and complicated a nature to be trusted to a single person, instituted a new officer, by the name of *Advocate of the Exchequer*¹⁰³, to be chosen from among those who were of the first eminence in the profession of the law. Thus Severus, afterwards emperor, was appointed by Antoninus Pius¹⁰⁴, and was succeeded in the same by the excellent Papinian¹⁰⁵. The duty of this Imperial Advocate, or *Patron*, as he was sometimes called, was to superintend the accounts of the Procurators of the Revenues¹⁰⁶. Neither was he permitted to undertake any cause against the crown¹⁰⁷, even if he had laid down the office, without the special permission of the prince himself¹⁰⁸. It was his business likewise to see that all escheats and forfeitures were regularly brought to account¹⁰⁹; and, as he is ex-

Advocate of
the Exche-
quer.

¹⁰¹ "Ubi aliquis voluisset—procuratores, i. e. rationales ordinare, nomina eorum proponere, hortans populum, ut si quis haberet criminis, probaret manifestis rebus." *Æl. Lamp. in Alex. Sev.* 45.

¹⁰² "Rationales cito mutabat, ita ut neque nisi annum compleret; eosque, si boni essent, oderat, *malum necessarium* vocans." *Id.* 46.

¹⁰³ "*Fisci Advocatum* primus instituit." *Æl. Spart. in Hadr.* 20.

¹⁰⁴ "Severum ille ad *Fisci advocatorem* delegerat ex formulario forensi." *Æl. Spart. in Geta*, 2.

¹⁰⁵ Severo in *advocatione fisci* successit." *Id. in Carac.* 8.

¹⁰⁶ "Rationales, private rei causis, vel sacris aerariis prædentes, examen præfente Fisci Advocato suscipiant." *C.* 2. 9. 4.

¹⁰⁷ "Eos qui causam Fisci egissent prohibitum est adversus fiscum patrocinium præstare." *C.* 2. 9. 1.

¹⁰⁸ "Potes auctoribus nostris adversus fiscum quoque patrocinium exhibere privatis; dum eam scilicet causam, quam tu, cum Fisci Advocatus fueras, forte tractasti, suscipere declines." *C.* 2. 9. 2.

¹⁰⁹ "Apertissimi juris est, ut quod ex cuiusque patrimonii ceciderit in casum, et legibus et recto juris ordine fisci advocatis agentibus vindicetur." *C.* 10. 11. 5.

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pressly forbidden, under severe penalties, to conceal or embezzle any part of the fiscal perquisites; so is he restrained from abusing his power, by instituting any groundless and vexatious suits against private subjects¹¹⁰. In consequence of these services, he was rewarded with a handsome salary from the emperor himself¹¹¹. Beside this, he was indulged with a variety of privileges, and other high marks of distinction, many of which were extended likewise to his children¹¹². From the frequent mention of these officers in the plural number, it appears that there was one of them in every province at least; and from the very great similarity of their duties, stations, and characters, there can be no doubt that the very high and venerable offices of the Advocate, Attorney and Solicitor General to the princes of this country, are derived from a similar origin.

Division of
the empire
by Theodo-
sius.

Valentinian, Theodosius, and most other princes of the Christian persuasion, were great law-makers, and more particularly in religious matters; the effects of which will be mentioned on some future occasion. An event of this importance loudly called for some material innovations in the antient jurisprudence, and rendered several new laws absolutely necessary. But it is true likewise, that

¹¹⁰ "Fisci advocatus, poenam metuens, caveat ne fiscalia commoda occultet: neve, nullo negotio existente, fisci nomine privatis audeat calumnias commovere." C. Theod. 10. 15. 1.

¹¹¹ Thus says the emperor Justin: "Restituendæ sunt clarissimis eloquentiæ luminibus sexaginta auri libræ, quas sub imperio Zenonis divæ memoriæ pedaneis deputatas arbitris, nec non fidejussorum vires æstimantibus, tamen auferendas credidit præparca posterioris subtilitas principis, ut jam liberalitate nostri numinis, viri clarissimi Fisci Patroni, præfatam auri summam sine fraude annis singulis consequantur, ab amplissima tua sede pari lance in utrumque dividendam." C. 2. 8. 6.

¹¹² This rescript is directed to A. Marinus, the "Præfectus Prætorio."

¹¹³ "Jubemus," says the emperor Anastasius, "viros clarissimos fisci pro tempore patronos fori celsitudinis, solemnibus festivitatis Kalendarum Januariarum ipsius tantummodo anni, per quem tale peragunt officium, inter spectabiles sacri nostri Consistorii Comites divina nostræ serenitatis manu puncti consequi solatia. Et postquam tale deposuerint officium, si quidem filios ingenuos habeant, eos clarissimorum Notariorum inferi consortio, Tribunorum sacras solitas epistolas sine quadam suffragii solutione percepturos." C. 2. 8. 4. 1 & 2.

among

among these some were superfluous, and only increased the bulk, already much too large, without improving the constitution. The whole empire certainly owed many obligations to the valour, the wisdom, and equity of Theodosius; though it severely suffered after his death, by his very imprudent partition of the dominions between his two sons. The capital of the West fell to the share of Honorius, the younger; and though both the divisions were ostensibly held in copartnership, and governed by the same laws, yet the principles of separation soon began to take too deep a root to be ever eradicated. Separate views and interests occupied the minds of the succeeding princes; and the unity of power and administration being thus irreparably destroyed, both were left an easier prey to the common enemy.

Arcadius, the elder son of Theodosius, succeeded to the throne of Constantinople, which continued to exist for many centuries to come, in a gradual but incurable state of decline, the shadow only of her parent Rome. With her she likewise sympathized in her distresses and convulsions; though she had often the good fortune to be under the government of princes, by whose animated exertions she was restored to a temporary splendor and prowess. Of this number was Theodosius the Second, the son of Arcadius, by whom he was distinguished with the style and title of Augustus, soon after his birth; and, upon the death of his father, became sole master of the Eastern Empire. By the attention of his wise and excellent guardian, Anthemius, he was educated in such principles of virtue and policy, as would have made his reign perfectly happy both to himself and people, had not his too great easiness of temper laid him open to the influence of false friends and favorites, who abused his confidence. This foible, which exposed the liberties and properties of his innocent subjects to the oppressions of avaritious ministers and

Arcadius.
Theodo-
sius II.
A. D. 402.
409.

and corrupt magistrates, is wholly without excuse, and much depreciates the other meritorious parts of his character. It is generally allowed, however, that his heart was good; and, though his abilities were not of the most splendid sort, yet that he was possessed of sufficient judgment to understand the duties of his office, and to set on foot many improvements and reformatations, which have reflected great honor upon his memory, and have been attended by many important benefits to posterity.

Decay of
Learning.

Among the numerous defects and irregularities of the age of Theodosius, none afforded a more copious subject of melancholy reflexion, than the confused state, and rapid decay, of sound and useful learning. In the more flourishing times of the imperial government, the Muses were courted, and received under the peculiar protection of the best and wisest princes. Hadrian, whose mind was much addicted to study, founded a school or academy at Rome for the encouragement of polite literature¹³; to which all persons that were inclined, some even of the emperors themselves, resorted for improvement, and to hear the lectures in poetry and rhetoric¹⁴. In compliment to Athens, the ancient seat of taste and elegance, he called it the "Athenæum," and the traces of it are yet remaining in that venerable capital. Alexander Severus improved these institutions by annexing salaries to the professors of various sciences, appointed the auditories, and allowed stipends to the children of poor people, to

¹³ "Ælius Hadrianus, eloquio, togæ-
que studiis accommodatior—Græcorum
more, seu Pompilii Numæ, ceremonias,
leges, gymnasia, doctoresque curare oc-
cepit, adeoque quidem, ut etiam ludum
ingenuarum artium, quod Athenæum vo-
cant, constitueret." Sex. Aur. Vict. de
Cæs. 14. To this the Greek historian like-
wise alludes in the following passage: Σο-

ναγω ἡμᾶς ἐς τὸ Ἀθηναῖον καλουμένον ἀπὸ τῆς ἐν
αὐτῇ τῶν παιδευομένων ἀσκήσεως. Dio Cass. 20.
17.

¹⁴ Thus Alexander Severus: "Ad Athe-
næum, audiendorum et Græcorum et La-
tinorum rhetorum vel poetarum causa,
frequenter proceffit." Æl. Lamp. in
Alex. Sev. 35.

enable them to prosecute their studies¹¹³. But the distractions of the empire, in the succeeding years of the third century, were fatal to the cause of letters, and threatened to involve them in barbarism and oblivion. It must be confessed, however, that some of the Constantinopolitan princes shewed a proper sense of the necessity of their revival and encouragement, and enacted many wise laws for that laudable purpose. Constantine himself set the example, by granting divers privileges and immunities to the professors, as well as to their families; by protecting their persons from insults, and by inflicting severe punishments upon those who interrupted them in the pursuit of their learned inquiries¹¹⁴.

Valentinian, without neglecting the rest, seems to have been more especially attentive to the faculty of Physic¹¹⁵, which, in every age, has been, more than all the other, exposed to the intrusions of ignorant pretenders and arrogant empirics. Beside this, he made several wise regulations concerning the students who came to Rome for their education. As these were collected from several distant quarters of a vast empire, he required that each of them should bring with him a certificate, under the hands of the provincial judges (whose

¹¹³ " Rhetoribus, grammaticis, medicis, aruspici-
bus, mathematicis, mechanicis, architectis salaria instituit, et auditoria decrevit, et discipulos cum annonis pauperum filios, modo ingenuos, dari iussit." *Æl. Lamp. in Alex. Sev. 44.*

¹¹⁴ Of these, the following laws may serve as specimens: " Medicos, grammaticos, et professores alios literarum, immunes esse, cum rebus quas in civitatibus suis possident, præcipimus: et honoribus fungi: in jus etiam vocari eos, vel pati injuriam prohibemus, ita, ut si quis eos vexaverit, centum millia nummorum æratio inferat, a magistratibus, vel quinquen-

alibus exactus, ne ipsi hanc pœnam sustineant." *C. Theod. 13. 3. 1.* And again, " Beneficia divorum retro principum confirmantes, medicos et professores literarum, uxores etiam et filios eorum ab omni functione et ab omnibus muneribus publicis vacare præcipimus, nec ad militiam comprehendendi, neque hospites recipere, nec ullo fungi munere, *quo facilius liberalibus studiis et memoratis artibus multos instituant.*" *Ib. l. 3.*

¹¹⁵ " Archiattrorum privilegia, quæ his vetustis sanctionibus adtributa sunt inlibata volumus permanere, ac tenere perpetuam firmitatem." *Ib. l. 15. pr.*

leave

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leave they were first directed to obtain), of the respective places and times of their nativity, and of their personal characters. And further, that they might not waste their time in useless pursuits, they were to declare the particular branch of learning to which they meant to apply¹¹⁸. Their lodgings in the city were to be notified to the proper officers of the police; whose duty it was to watch over their behaviour, to take care that they contracted no bad acquaintance; that they did not frequent public spectacles, nor unseasonable entertainments¹¹⁹. Such as offended in any of these particulars were subjected to corporal punishments, expulsion from the city, and banishment to their own homes¹²⁰. Such as had been diligent were permitted to continue till they had completed their twentieth year, after which they likewise were obliged to return to their native habitations¹²¹. To prevent a negligent execution of these laws, the officer of that department was obliged to make inquiry every month, who the students were, and from whence they came, and to give orders for their removal, according to the distance of their several provinces;

¹¹⁸ "Quicumque ad urbem discendi cupiditate veniunt, primitus ad magistrum census, provincialium judicum, a quibus copia est danda veniundi, ejusmodi literas proferant, ut *oppida hominum, et natalis, et merita* expressa teneantur. Deinde, ut in primo statim profiteantur itinere, *quibus potissimum studiis operam navare proponant.*" C. Theod. 14. 9. 1. pr.

¹¹⁹ "Tertio, ut *hospitia eorum* sollicitè Censualium norit officium, quo ei rei impertiant curam, quam se adseruerint expetisse. Idem immineant Censuales, ut singuli eorum tales se in conventionibus præbeant, quales esse debent, qui turpem inhonestamque famam, et *consciaciones*, Ib.

quas *proximas* putamus esse *criminibus*, æstiment fugiendas: neve spectacula frequentius adeant, aut adpetant vulgo intempestiva convivium." Ib.

¹²⁰ "Quinetiam tribuimus potestatem, ut si quis de his non ita in urbe se gesserit, quemadmodum liberalium rerum dignitas poscat, publice verberibus affectus, statimque navigio superpositus, abjiciatur urbe, domumque redeat." Ib.

¹²¹ "His sane, qui sedulo operam professionibus navant, usque ad vicefimum ætatis suæ annum Romæ liceat commorari: post id vero tempus, qui neglexerit sponte remeare, sollicitudine præfecturæ, etiam impurius, ad patriam revertatur." Ib.

such

such only excepted as were employed in any corporate offices within the city ¹²².

C H A P.
I.

These laws were enforced, and these privileges renewed, with many additions, by several succeeding princes; all which gave a temporary check to the progress of ignorance, though they were far from restoring learning to its former purity and consequence. It still waited for a public adoption by the supreme power, and to be made a part of the national establishment. For want of these advantages, the liberal arts were prostituted to the hands of mean and illiterate pedagogues, in whom arrogance supplied the place of genius, and pedantry of erudition; who taught publicly in schools and cells opened by their own authority. Each of them, likewise, had a system of instruction peculiar to himself; and wasted more time in perverting the understanding of his disciples, and in exciting them to revile and malign their opponents, than in the calm and impartial investigation of genuine science.

To suppress these turbulent polemics, Theodosius enacted a law to forbid them teaching in this public and promiscuous manner, under pain of infamy, and expulsion from that town in which they exercised their profession without proper licence ¹²³. This prohibition, however, did not extend to teaching in private houses, provided their scholars consisted only of the members of the

University
erected at
Constanti-
nople,
A. D. 425.

¹²² " Verum ne hæc perfunctorie fortasse
" curentur, præcella sinceritas tua" (i. e.
Olybrius, P. V. to whom this rescript is
directed) " officium censuale commoncat,
" ut per singulos menses, qui, vel unde ve-
" niant, quive sint, pro ratione temporis,
" ad Africam, vel ad cæteras provincias,
" remittendi, brevibus comprehendat, his
" duntaxat exceptis qui corporatorum sunt
" oneribus adjuncti." C. Theod. 14. 9. 1.

¹²³ " Universos, qui, usurpantes sibi no-

" mina *Magistrorum*, in publicis magistra-
" tionibus cellulisque collectos undique dis-
" cipulos circumferre consueverunt, ab
" ostentatione vulgari præcipimus amoveri:
" ita ut si qui eorum, post emissos divinæ
" sanctionis adfatus, quæ prohibemus atque
" damnamus iterum forte temptaverit, non
" solum ejus quam meretur infamix notam
" subeat, verum etiam pellendum se ex ipsa,
" ubi versatur inlicito, urbe cognoscat."
Ib. 14. 9. 3.

P p p

family.

family¹²⁴. In the room of these self-created masters, he erected a school or auditory of his own, within the precincts of the palace, and supplied it with the ablest professors that could be found in grammar, oratory, languages, philosophy, law, and whatever else came within the description of polite literature; assigning particular apartments to each, that the scholars might not interrupt one another with their mixed and confused babbling¹²⁵. The same regulations were afterwards revived and reinforced by Justinian¹²⁶.

These imperfect, but curious, specimens of ancient academical institutions¹²⁷, have undoubtedly served as the models of those illustrious seminaries, which the pious and generous emulation of princes, prelates, and other noble and opulent friends of humanity and learning, have since erected in every country of Europe. And though the superstition of the times had frequently no inconsiderable share in their establishment¹²⁸; yet the principles of public utility,

¹²⁴ "Illos vero, qui intra plurimosum domus eadem exercere privatim studia consueverunt, si ipsis tantummodo discipulis vacare maluerint, quos intra parietes domesticos docent, nulla hujusmodi interminatione prohibemus." Cod. Th. 14. 9. 3.

¹²⁵ "Habeat igitur auditorium speciale literarum nostrarum, in his primum quos Romanæ eloquentiæ doctrina commendat, oratores quidem tres numero, decem vero grammaticos: in his etiam, qui facundia Græcæ citatis pollere noscuntur, quinque numero sint Sophistæ, et Grammatici æque decem. Et quoniam non his artibus tantum adolescentiam gloriosam optamus institui, profundiores quoque scientiæ atque doctrinæ memoratis magistris sociamus auctores. Unum igitur adjungi ceteris volumus, qui philosophiæ arcana rimetur: duos quoque qui Juris et Legum formulas pandant. Ita ut unicuique loca specialiter deputata assignari faciat Sublimi-

tas Tua" (addressing himself to the Præfect of the City) "ne discipuli sibi invicem possint obstrepere, vel magistri: neve linguarum confusio permixta, vel vocum, aures quorundam, aut mentes a studio literarum avertat." Ib. et 15. 1. 23. in which the situation and extent of these edifices are particularly described.

¹²⁶ C. Just. 11. 18. which is a literal transcript of the foregoing.

¹²⁷ They are to be found at large in C. Th. 13. 3. de Medicis et Professoribus; and in 14. 19. de Studiis Liberalibus Urbis Romæ, et Constantinopolitanæ.

¹²⁸ Witness a well-known one in particular (to which, under Providence, the author owes the most dear and valuable blessings of his life), designed, among many other much more effectual purposes, to pray for *Departed Souls*, founded in the University of Oxford, by Henry Chichele, Archbishop of Canterbury, in the year 1437.

and a sincere concern for the interest of religion and learning, are in general so very predominant, and so warmly inculcated in their statutes, that they may be applied, in their fullest force, to the completion of these beneficial views, without danger of hindrance or embarrassment from the more insignificant and useless parts of their respective constitutions; many of which are now not only become obsolete and impracticable, but inconsistent with the laws and maxims of the more sensible and improved legislatures.

C H A P.
I.

But, in particular, it should be ever remembered, to the eternal honor of the two great luminaries of this country, that the bright beams of divine and human knowledge, from thence for ever flowing, have contributed, among the most leading and efficient causes, to the confirmation of those liberties, both religious and political, which have raised this government so much above the level of its rivals, and made it the envy of the universe. May the same useful and honorable views always continue to animate their counsels, and direct their discipline; and, as it is their duty, so may it ever be their ambition, to encourage and cultivate those sciences which the most conduce to delight the understandings, to mend the hearts, and to purify the morals, of the youth committed to their charge; and, on the most trying occasions, to stand forth the faithful friends, and steady champions, of that excellent constitution, to which they owe the protection of their revenues and privileges.

Though Theodosius, when he thus laid a foundation for the improvement of science, had made the revival of jurisprudence a primary object, he had still the mortification to perceive that it did not advance in proportion to the liberal rewards he had held out for its encouragement: that, notwithstanding the close application of many laborious students, few acquired any great depth of know-

Theodosian
Code,
A. D. 438.

BOOK
IV.

ledge, or made any shining figure in that line. These observations led him to an inquiry into the causes of this general decline of a profession, which he esteemed of so high consequence to the public welfare. This he soon found to arise from the immense heaps of juridical lore, the works of former princes and lawgivers; which had been insensibly accumulating for several past centuries, and now lay altogether in a kind of chaos, without the least order, or discrimination of parts¹²⁹. The materials, indeed, were rich, various, and inexhaustible, abundantly sufficient for a very extensive and complete collection; but he was pleased to confine his choice entirely to the Constitutions of his Christian predecessors.

Having, therefore, made these the only objects of his intended reformation, he appointed a committee of eight persons, of the most distinguished learning and abilities, whose business it should be to reduce them into a regular and methodical compendium, to purge them of all unnecessary prefaces and glosses, and to accommodate them, as much as possible, to general use¹³⁰. To prevent all further confusion, and doubts concerning the authority of

¹²⁹ The emperor declares his motives at large, in a Novel Constitution, which he published on purpose to confirm his Code: "Sæpe nostra Clementia dubitavit, quæ causa faceret, ut tantis propositis præmiis quibus artes et studia nutriuntur, tam pauci, rarique extiterint, qui plena Juris Civilis scientia ditarentur: et in tanto lucubrationum tristi pallore, vix unus aut alter receperit soliditatem perfectæ doctrinæ: quod nequaquam ulterius sedula ambiguitate tractetur, si copia immensa librorum, si actionum diversitas, difficultasque causarum animis nostris occurrat, si denique moles *Constitutionum Divinarum*, quæ velut suppressa demersæ caliginis et obscuritatis vallo sui notitiam humanis ingeniis interclaudit." Nov. Theod. 1.

¹³⁰ "Verum egimus negotium temporis nostri, et discussis tenebris compendio brevitatis, lumen legibus dedimus, electis viris nobilibus exploratæ fidei, famosæ doctrinæ, quibus delegata causa civilis officii, purgata interpretatione, retro principum scita vulgavimus: ne jurisperitorum ulterius severitate mentita, dissimulata scientia, velut ab ipsis adytis expectarentur formidanda responsa: cum liquido pateat, quo pondere donatio deferatur, quæ actione petatur hæreditas, quibus verbis stipulatio colligetur, ut certum vel incertum debitum sit exigendum; quæ singula prudentium detecta vigiliis, in apertum lucemque deducta sunt splendore numinis nostri radiante." Ib.

any former laws, he enacted, that, from the first day of January, in the year of its publication, this collection should be used in all courts of justice, and should be the only standard for the future throughout the empire¹¹. With the same view to uniformity, he directed that no edicts published by Valentinian, his nephew and son-in-law, who presided in the West, nor even any made by himself in the East, should be of any force, unless inserted in his Code; some few only excepted, that related to the body-guard of the prince, and the expences belonging to certain Palatine offices¹².

While we are speaking of the present compilation, it would be great injustice to the character of this benevolent monarch, to pass over the candor and modesty with which he gives up all pretensions to whatever merit may accrue from the internal perfection of the laws themselves, and claims no other than that of brevity and perspicuity; still scrupulously preserving the names and titles of the original authors at the head of each, as they stand in order under their respective titles¹³; which, while it preserves their memory, contributes to illustrate the history of those times.

As

¹¹ “ Quamobrem deterfa nube volumi-
“ num, in quibus multorum nihil explican-
“ tium ætates attritæ sunt, compendiosam
“ Divalium Constitutionum scientiam ex
“ D. Constantini temporibus roboramus,
“ nulla post Kal. Jan. concessa licentia ad
“ forum et quotidianas advocaciones jus prin-
“ cipale deferre, vel litis instrumenta com-
“ ponere, nisi ex his videlicet libris, qui in
“ nostri numinis vocabulum transferunt, et
“ sacris habentur in scriniis.” Nov. Th. 1.

¹² “ Hic adjicimus nullam constitutio-
“ nem in posterum, velut latam in partibus
“ Occidentis, aliove in loco, ab invictissimo
“ principe, filio nostræ Clementiæ perpetuo
“ Augusto Valentiniano posse proferri, vel
“ vim legis aliquam obtinere, nisi hoc idem
“ divina pragmatica nostris mentibus inti-

“ metur. Quod observare necesse est in his
“ etiam, quæ per Orientem nobis auctori-
“ bus promulgantur: falsitatis nota dam-
“ nandis, quæ ex tempore definito *Theo-*
“ *dofano* non referuntur in *Codice*. Ex-
“ ceptis his, quæ habentur apud militum
“ sancta principis; vel, de titulis publicis
“ expensarum aliarumque rerum gratia, quæ
“ in registris diversorum officiorum relata
“ sunt.” Ib.

¹³ “ Quamquam nulli retro principum
“ æternitas sua detracta est, nullius latoris
“ occidit nomen, imo lucis gratia mutati,
“ claritudine consultorum augusta nobiscum
“ societate junguntur. Manet igitur, ma-
“ nebitque pro perpetuo elimata gloria con-
“ ditorum, nec in nostrum titulum demigrabit,
“ nisi lux sola brevitatís. Et quamvis nostris

“ auspiciis

BOOK
IV.Novels of
Theodosius,
A. D. 448.

As Theodosius lived several years after he had completed his Code, he found it necessary to make several additions to it, which were called *Novel Constitutions*. These were confirmed by his own authority in the East; and in the West, by a special decree of Valentinian, published at Ravenna, whereby both divisions of the empire are ordered to be governed by the same laws¹²⁴.

Ab A. D.
312 ad 438.

This Code includes a period of one hundred and twenty-seven years, and is distributed into sixteen books. They consist of imperial acts of every species and denomination; and though the general order in which they are arranged is very clear and intelligible, particular parts are liable to great exceptions. Many useful constitutions are omitted, which were afterwards preserved by Justinian: some, from an affectation of brevity, are rendered obscure; too many are inserted, of the same tenor; and as many more that contradict and destroy each other's force. But the laws which have been the most severely censured, are those which permit the use of the stupid, indelicate, and impious ceremonies of Paganism.

A. D. 319.

It is true, that these were enacted by Constantine when that religion was the most generally professed throughout the empire; and consequently some condescension to the prejudices of the times was necessary to be shewn by a prudent and cautious prince. Though, when Christianity had once gained a permanent and universal establishment, it should seem highly incongruous to perpetuate these laws, which were diametrically opposite to its interest; as there is certainly an essential difference between a charitable toleration of erroneous opinions, and a legal authority given to a false and diabo-

¹²² auspiciis totius operis instaurationi deberetur,
¹²³ attamen magis imperatorium, magisque
¹²⁴ credimus gloriosum, si, fugata invidia,
¹²⁵ perennitatis jure memoria remaneret aucto-
¹²⁶ rum. Nobis ad fructum bonæ conscientie
¹²⁷ abundeque sufficit, revelatis legibus, inventa

¹²⁸ majorum obscuritatis injuria vindictasse." Nov. Theod. 1.

¹²⁹ " Ut sicuti uterque orbis individuus
¹³⁰ ordinationibus regitur, iisdem quoque le-
¹³¹ gibus temperetur." Nov. Val. inter
¹³² Theod. 1. 13.

lical worship, which the Divine master and finisher of our faith came into the world on purpose to destroy.

C H A P.
I.

Such are the reflexions of some very able and learned commentators of modern times. And yet, when these laws come to be examined with an impartial judgment, they will be found to err in both extremes; as they inflict no less a punishment than that of flames upon the blind and deluded priests and ministers of superstition, who should presume to continue or cultivate their antient friendship with the members of the Christian church; but, at the same time, indulge them with a full liberty of erecting altars and temples to their Heathen deities, for the use of all such as are disposed to resort to them¹³⁵. A more even hand might surely have been kept, between the merciless persecution of mistaken zealots, and the unlimited permission of their pernicious doctrines or practices.

The Theodosian Code, being the first work of its kind which ever came out under the sanction of imperial authority, was received with profound respect throughout the whole Roman dominions. It was even adopted by the most declared enemies of the Roman name, and incorporated in their respective municipal systems; as will be seen more particularly on a subsequent occasion¹³⁶.

Theodosius

¹³⁵ These laws are as follow: "Nullus aruspex limen alterius, accedat, nec ob alteram causam; sed hujusmodi hominum, quamvis vetus, amicitia repellatur: *concremando illo Haruspice*, qui ad domum alienam accesserit: et illo qui eum suasionibus vel præmiis evocaverit, post ademptionem bonorum, in insulam detruendo. Superstitioni enim suæ servire cupientes, *poterunt publice ritum proprium exercere*." And again, "Haruspices et Sacerdotes, et eos, qui huic ritui adsolent ministrare, ad privatam domum prohibemus accedere, vel sub prætextu amicitiae limen alterius ingredi, poena contra eos

proposita, si contempserint legem: qui vero id vobis existimatis conducere, *aditus aras publicas atque delubra, et consuetudinis vestrae celebrate solennia*: nec enim prohibemus præteritæ usurpationis officia libera luce tractari." C. Theod. 9. 16. 1 & 2.

¹³⁶ This work is still extant, though not quite entire; and the most celebrated edition was printed at Paris. A. D. 1665, in six volumes in folio, with a Comment by Jac. Gothofred, an eminent French advocate, which almost overwhelms the text; but the very learned and critical observations therein contained make ample amends for their prolixity.

B O O K
IV.A. D. 450.
A. D. 455.

Theodosius himself died, in the flower of his age, not long after he had given his own laws their final confirmation; and his colleague Valentinian the Third survived him but a few years.

In the mean while, the Western Empire suffered every extreme of misery that war and rapine could inflict upon it. Honorius, for greater security, had removed the principal seat of government to Ravenna, a city upon the Adriatic, where it existed for a few ages longer, in a languishing state, under a turbulent succession of upstarts and usurpers, who still called themselves Roman Emperors; but who had no more lawful pretensions to the imperial title, than they had strength or abilities to maintain it. The capital itself, left
A. D. 410. and abandoned by its natural masters, was surprised and plundered by Alaric the Goth; and, after many ineffectual struggles with the other rude and warlike nations of the North, became a prey, with the rest of its valuable appendages, to Odoacer king of the Heruli;
A. D. 476. who extinguished the Roman power in Italy, under the weak reign of Romulus, or Momilius, Augustus, more usually known in history by the surname of Augustulus.

Thus was this proud paragon of fortune totally deprived of that dominion which she had once exercised with unbounded sway over the greatest part of the universe: her territories were cantoned out among rovers and barbarians; and she herself forced to receive the yoke, and adopt the manners, of a savage and illiterate people, whom she had formerly regarded with the most sovereign contempt.

lixity. We gladly acknowledge a variety of obligations to this work, especially to the *Prolegomena*, which are chiefly of the historical kind; and to which the curious reader is referred, for further satisfaction upon the subjects above treated of.—The other au-

thors we have used on this occasion are, Howel's Hist. Mun. p. 2. c. 3. § 1—5. Hein. Hist. Jur. Civ. § 377—382. Id. Præm. ad Ant. Rom. § 22, 23, 24. Giann. 2. 7.

C H A P.

C H A P. II.

General state of the Laws after Theodosius II.—Reformation of them by Justinian.—Institutes.—Digest, or Pandects.—Code.—Novels.—“Corpus Juris Civilis.”—Character of Justinian.

AFTER the late fatal severance of the Western regions, Constantinople became the legal representative of Rome; and succeeded to the title and dignity of Capital of the *Roman Empire*, as it was still affectedly called, though no part of the original territories then adhered to it. However, the same form and principles of government continued to predominate; till, having languished for near ten centuries longer, under a slow but incurable decay, and worn out by a series of disasters, it finally expired under the merciless swords of rapacious infidels. C H A P.
II.
A. D. 1453.

Almost every variety, that could distinguish one character from another, was to be found among the successors of Theodosius the Second in the East: though, how much soever they differed from each other in point of personal qualifications, or political abilities, they were all equally fond of exercising their legislative functions. This, indeed, was no more than what the daily exigencies of such a mixed and numerous people demanded. But, having no uniform national plan in view, the laws thus enacted, however proper or excellent in themselves, were applicable only to particular cases and persons; consequently, they contributed more to increase the mass of imperial constitutions, than to refine or elucidate the general system of jurisprudence. In fact, they embarrassed it with new
Q q q difficulties,

B O O K
IV.Justinian,
A. D. 527.

difficulties, and multiplied those contradictions, which had already too much obstructed the progress of that necessary and useful science.

To this state of confusion were they reduced when Justinian ascended the imperial throne; and, being dispersed, with the other writings of the antient magistrates and professors, among no less than two hundred thousand volumes, or rolls, were now grown almost useless, and were lost in their own immensity. Justinian, at this time in his full vigor both of body and mind, conceived vast designs for the restoration of the empire to its original splendor, as well as for the improvement of its constitution. Of the many former attempts to methodize the laws, none had ever yet been carried into execution, such detached collections only excepted as have been already mentioned. But these, being all very partial and confined, both in respect to their subject-matter, and the periods wherein they were enacted, fell far short of that noble and comprehensive plan which Justinian had projected in his own mind. This was, to take a minute and careful survey of this indigested mass of discordant materials; to separate and arrange its parts, and from thence to form one regular and well-connected body of laws, to be the future standard of justice for the whole empire.

His directions for the revival of the Imperial Constitutions.

A scheme so full of consequences to the future welfare of the state requiring the utmost circumspection, he entrusted the management of it to a committee of ten persons of the most approved learning and abilities, who had borne some of the highest offices about the court¹; instructing them to begin their work with a careful revival of the three foregoing Codes, and of all the other imperial constitutions of his predecessors, whether Pagan or Christian, as well before as since the time of the second

¹ Their names and titles are set forth at length in Pref. 1. ad C. § 1.

Theodosius.

Theodosius*. From hence they were to extract a series of plain and concise laws; omitting the former superfluous preambles, as well as all other matters that carried a too similar or too opposite a meaning; but with liberty either to extend or limit their sense, or to alter them, in whatever manner they should think most likely to facilitate their future use and operation. This done, they were to arrange them under separate titles; that, by thus bringing whatever related to the same subject under one point of view, their import might be the better understood. Several directions were likewise given concerning the order in which they were to stand according to their dates, and the Consuls in whose times they were published; with some other less material particulars, which relate more to their internal form, than to their binding authority.

The whole, thus compiled, was called the *Code* bearing his own name; from whence alone, for the quicker dispatch of business, the imperial constitutions were to be quoted on all future judicial decisions[†].

It

* This design is best explained in his own words, as they stand in his address to the Senate upon the same occasion: "Hæc, quæ necessario corrigenda esse multis retro principibus visa sunt, interea tamen nullus eorum ad effectum ducere ausus est: in præsentibus rebus donare communibus auxilio Dei Omnipotentis censuimus, et prolixitatem litium amputare: multitudine quidem constitutionum, quæ tribus Codicibus Gregoriano, Hermogeniano, atque Theodosiano continebantur, illarum etiam quæ post eosdem Codices a Theodosio divinæ recordationis, aliisque post eum retro principibus, et a nostra etiam clementia positæ sunt, rescanda: uno autem codice sub felici nostri nominis vocabulo componendo, in quem colligi tam memoratorum trium codicum, quam no-

vellas post eos positas constitutiones oportet." Præf. 1. ad Cod. pr.

† "Quibus specialiter permisimus (resecatis tam supervacuis quantum ad legum soliditatem pertinet, præfationibus, quam similibus, et contrariis, præterquam si juris alia divisione adjuventur, illis etiam quæ in desuetudinem abierunt) certas et brevi sermone conscriptas ex iisdem tribus codicibus, et novellis constitutionibus leges componere, et congruis titulis subdere, adjicientes quidem et detrahentes, imo et mutantes verba earum, ubi hoc rei commoditas exigeret: colligentes vero in unam sanctionem, quæ in variis constitutionibus dispersa sunt, et sensum earum clariorem efficientes." Ib. § 2.

‡ "Hæc igitur ad vestram notitiam ferre properavimus, ut sciatis quantam nos diu-

B O O K
IV.

A. D. 529.

Digest, or
Pandect.

It was divided into twelve books, and each book into several titles, with other smaller subdivisions; and includes all the imperial laws that were thought worth preserving, from Hadrian to Justinian. Being thus finished, in the third year of his reign, it received his public and solemn confirmation, by a rescript directed to Menna, the Prætorian Præfect⁵.

Justinian appears to have considered the Code only as an introduction to a work of much greater extent and utility, which was to go back to the very beginning of the Roman government itself, and to comprehend every branch of the antient jurisprudence, which has been the subject of our former inquiries. The chief of these were the *Responses* of the Lawyers⁶, and the *Edicts* of the Magistrates⁷; which, with the comments of subsequent annotators, were scattered about in two thousand volumes, and were subdivided into more than three hundred thousand verses or sentences⁸. The emperor himself seems alarmed and staggered at the difficulty of the undertaking; but, with the Divine favor, determines to persevere to its final completion⁹.

To

"turna super rerum communi utilitate cura
"sollicitet, studentes certas et indubitatas,
"et in unum codicem collectas esse de cætero
"constitutiones: ut ex eo tantummodo sub
"felici nostro nomine nuncupando *Codice*,
"recitatio constitutionum in omnibus ad
"citiores litium decisiones fiat iudiciis."
Præf. § 3.

⁵ This constitutes the second Preface to the Code, and has for its title "De Justiniano Codice confirmando." It explains the whole of the Emperor's design in undertaking this useful work, and is therefore very worthy the reader's more particular perusal. V. etiam Grav. O. J. 1. 131. Hein. Hist. J. C. § 390. Gian. 3. 3. cum multis alijs.

⁶ "Responſa Prudentum." v. b. 2. c. 4.

⁷ "Jus Honorarium." b. 2. c. 6.

⁸ "Sed cum omnia percontabamur, a præfato viro excelſo ſaggeſtum duo pœne millia librorum eſſe conſcripta, et plus quam trecenties decem millia verſuum a veteribus effuſa." C. 1. 17. 2. 1.

⁹ "Hoc opere conſummato, in uno volumine, noſtro nomine præfulgente, coadunato: cum ex paucis et tenuioribus relevati ad ſummam et pleniffimam juris emendationem pervenire properaremus, et omnem Romanam ſanctionem et colligere, et emendare, et tot auctorum diſperſa volumina uno codice indita offendere, quod nemo alius neque ſperare, neque

To this end, he issued a mandate to Tribonian, whom he calls the *Questor of his Palace*¹⁰, committing the whole to his direction; and empowering him to call to his assistance any number of the most skilful advocates, statesmen, and politicians, that he should approve". Their first business was, to peruse the writings of all the great professors, whom former princes had entrusted with the power of interpreting the law; and from thence to select the most material parts, rejecting all superfluities and contradictions, so that one principle might suffice for one subject". In their determinations upon questions either of expediency or equity, they were not to suffer their judgments to be biased by the multitude of authorities; as the single opinion of an inferior writer might, in some instances, be preferable to that of a majority: so that if any doctrine could be extracted from writings of less general merit, that was capable of throwing a better light upon a passage even of Papinian himself, it should be inserted without hesitation". They were likewise indulged

with

" neque optare ausus est: Res quidem nobis difficillima, imo magis impossibilis videbatur; sed manibus ad cælum erectis, et æterno auxilio invocato, eam quoque curam nostris reposuimus animis, Deo freti, qui et res penitus desperatas donare, et consummare suæ virtutis magnitudine potest." Præf. 1. D. ad Tribon. § 2.

¹⁰ This great officer was next in rank to the *Prætorian Præfekt*; and he seems to have been the confidential minister of the crown in all matters of law. V. the authorities relating to this point, collected by Howel, Hist. Mun. p. 2. c. 1. sec. 2. § 59, 60.

" Ad tuæ finceritatis optimum respexit mus ministerium; tibi quoque primo et hoc opus commisi, ingenii tui documentis, ex nostri Codicis ordinatione acceptis: et iussimus, quos probaveris tam ex facundissimis antecessoribus, quam ex viris

disertissimis togatis fori amplissimæ sedis, ad sociandum laborem eligere. His itaque collectis, et in nostrum palatium introductis, nobisque tuo testimonio placitis, totam rem faciendam permisi: ita tamen, ut tui vigilantissimi animi gubernatione res omnis celebretur." Præf. 1. ad Trib. § 3.

¹² "Jubemus igitur vobis antiquorum prudentium, quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes præbuerunt, libros ad jus Romanum pertinentes et legere, et eliminare: ut ex his omnis materia colligatur, nulla, secundum quod possibile est, neque similitudine, neque discordia derelicta; sed ex his hoc colligi, quod unum pro omnibus sufficiat." Ib. § 4.

¹³ "Sed neque ex multitudine auctorum, quod melius et æquius est judicatum: cum possit unius fortitan et deterius sententia

with the same liberty, as before in the Code, to admit, reject, or alter whatever they thought most conducive to the perfection of the work; and what they so adopted was to be received as law, without being liable to be impeached or invalidated, in consequence of any difference from the original ¹⁴.

These collections were to be distributed into fifty books, and these again into certain titles, in imitation either of the *Code*, or of the *Perpetual Edict*, as the compilers should judge most proper. They were to contain the whole of the antient law, for near fourteen hundred years past; and the opinions of every author therein preserved were to be treated with an equal degree of respect, in those branches of the science in which each was particularly known to excel; none of them being alike excellent in all ¹⁵. Upon the whole,

“tencia et multas et majores in aliqua
“parte superare. Et ideo ea quæ antea in
“notis Æmilii Papiniani ex Ulpiano et
“Paulo, necnon Marciano adscripta sunt,
“quæ antea nullam vim obtinebant propter
“honorem splendidissimi Papiniani, non
“statim respuere; sed si quid ex his ad
“repletionem summi ingenii Papiniani la-
“borum, vel interpretationem necessariam
“esse perspexeritis, et hoc ponere legis vi-
“cem obtinens non moremini.” Præf. 1.
ad Trib. § 6.

“Sed et hoc studiosum vobis esse vo-
“lunt; ut si quid in veteribus non bene
“positum libris inveniatis, vel aliquod su-
“perfluum, vel minus perfectum; super-
“vacua longitudine semota, et quod im-
“perfectum est, repleatis, et omne opus
“moderatum et quam pulcherrimum osten-
“datis. Hoc etiam nihilominus observan-
“do; ut si aliquid in veteribus legibus vel
“constitutionibus, quas antiqui in suis li-
“bris imposuerunt, non recte scriptum in-
“veniatis, et hoc reformatis, et ordini mo-
“derato tradatis: ut hoc videatur esse ve-

“rum, et optimum, et quasi ab initio
“scriptum, quod a vobis electum, et ibi
“positum fuerit. Et nemo ex compara-
“tione veteris voluminis quasi vitiosam
“scripturam arguere audeat.” Ib. § 7.

“Cumque hæc materia summa nostri
“numinis liberalitate collecta fuerit, opon-
“tet eam pulcherrimo opere extruere, et
“quasi proprium est sanctissimum templum
“justitiæ consecrare: et in libros quinqu-
“aginta, et certos titulos totum jus digerere,
“tam secundum nostri constitutionem Co-
“dicis, quam Edicti Perpetui imitationem,
“prout hoc vobis commodius esse patuerit;
“ut nihil extra memoratam consummatio-
“nem possit esse derelictum: sed his quin-
“quaginta libris totum jus antiquum per
“millesimum et quadriagentesimum annum
“confusum, et a nobis purgatum, quasi
“quodam muro vallatum nihil extra se
“habeat; omnibus auctoribus juris æqua
“dignitate pollentibus, et nemini quadam
“prærogativa servanda: quia non omnes
“in omnia, sed certi per certa vel meliores,
“vel deteriores inveniuntur.” Ib. § 5.

no laws were to be revived which had been abolished by long disuse; but those only were to prevail which had been the most constantly practised in courts of justice, or approved by the uniform reception of the metropolis; according to the maxim of Salvius Julian, who lays it down as a principle, that all other cities shall follow the custom of Rome; by which the emperor *now* means, not only the primitive city, but that likewise in which he presides¹⁶.

This learned body of men obeyed the imperial mandate with the greatest alacrity; and, though allowed ten years, a time short enough for so extensive a work, contrived to perform it in about three; fancying, perhaps, there was more merit in expedition than in accuracy. But, whether it was owing to this cause, or to the want of attention in the compilers, it was certainly not executed with that precision and exactness which the emperor, from his instructions, appears to have intended; and which, if strictly pursued, would have made it the pride of human wisdom and policy. Notwithstanding his express directions to them, to avoid all contradictory laws and to preserve such a general concord among them, that they should all lead to one consequence¹⁷, nothing is more common, than to find the judgment suspended by doctrines of a quite opposite tenor; upon the strength of which, an acute advocate may easily maintain either side of a controverted question with equal confidence.

¹⁶ "Sed et si quæ leges in veteribus libris positæ, jam in defuetudinem abiierunt, nullo modo vobis easdem ponere permittimus: cum hæc tantummodo obtinere volumus, quæ vel judiciorum frequentissimus ordo exercuit, vel longa consuetudo hujus æmæ urbis comprobavit; secundum Salvii Juliani scripturam, quæ indicat debere omnes civitates consuetudinem Romæ sequi, quæ caput est orbis

terrarum, non ipsam alias civitates. Romanam autem intelligendam esse non solum veterem, sed etiam regiam nostram, quæ Deo propitio cum melioribus condita est auguriis." Præf. 1. ad Trib. § 10.

¹⁷ "Nulla itaque in omnibus prædicti codicis membris *Antinomia* — aliquem sibi vindicet locum; sed sit una concordia, una consequentia, adversario nemine constituto." Ib. § 8.

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IV.

It would be a task no less irksome than unprofitable, to proceed upon a more minute inquiry into the various errors which a penetrating reader may have discovered in the course of such a complicated performance; most of which are laid indiscriminately to the charge of Tribonian, and called, after him, *Tribonianisms*; from a presumption, that, because he had the chief conduct of the work, he ought to be responsible for every one. Among these, he has been severely censured by some modern Civilians, for interpolating the decisions of the antient lawyers with his own opinions and refinements. But in this he acted in strict conformity to his instructions, which were, to preserve the names of the original authors, out of respect to their characters; but either to extend, retrench, or alter their opinions, so as to accommodate them, in the easiest manner, to the temper of the age, and to preserve their consistency with the plan and spirit of the present government¹⁸. The blame, therefore, if any, is imputable to him only under whose sanction these variations were made.

The emperor, in giving directions for preserving the names of the authors of the several laws at the head of each, either was not

¹⁸ “ Tanta autem a nobis antiquitati
“ habita est reverentia, ut nomina prudentum
“ taciturnitati tradere nullo patiamur
“ modo: sed unusquisque eorum qui auctor
“ legis fuit, nostris Digestis inscriptus est:
“ hoc tantummodo a nobis effecto, ut si
“ quid in legibus eorum vel supervacuum,
“ vel imperfectum, vel minus idoneum visum
“ est: vel adjectionem, vel diminutionem
“ necessariam accipiat, et restrictionem
“ tiffimis tradatur regulis, et in multis
“ milibus vel contrariis quod rectius habere
“ apparebat, hoc pro aliis omnibus positum
“ est, unaque omnibus auctoritate indulta:
“ ut quicquid ibi scriptum est, hoc nostrum
“ appareat, et ex nostra voluntate compo-

“ tum: nemine audente comparare ea quæ
“ antiquitas habebat, et quæ nostra aucto-
“ ritas introduxit: quia multa et maxima
“ sunt, quæ propter utilitatem rerum trans-
“ formata sunt: adeo ut etsi principalis con-
“ stitutio fuerat in veteribus libris relata,
“ neque ei pepercimus: sed et hoc corri-
“ gendum esse putavimus, et in melius re-
“ staurandum: nominibus etenim veteribus
“ relictis, quicquid legum veritati decorum
“ et necessarium fuerat, hoc nostris emen-
“ dationibus servavimus: et propter hanc
“ causam, et si quid inter eos dubitabatur,
“ hoc jam in tutissimam pervenit quietem,
“ nullo titubante relicto.” C. 1. 17. 2.
10.

sufficiently explicit himself, or was not thoroughly understood by the compilers. For though, in pursuance of his orders to look up to the fountain-head, they have actually preserved the doctrines of those eminent sages of the profession who flourished under the *old* and *middle* jurisprudence, they have too often suppressed their names; seldom taking notice of any other than those of the *new*, which begins with Hadrian¹⁹. This omission might possibly have arisen from a notion, that, as the writers of the later ages had carefully gleaned the most valuable treasures of their predecessors, their own characters alone would be sufficient to give them the force of law, without being obliged to go so far back into the recesses of antiquity, in search of the real authors, whose names are only quoted, as it were, by accident. From this circumstance, it is often difficult to discover, whether the persons thus introduced at the head of each law are speaking in their own, or in borrowed language: and from hence many obscurities in the Civil Law will for ever remain inexplicable, for want of knowing from what sources these principles were drawn, and for what times and occasions they were enacted²⁰.

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II.

Thus was this elaborate work completed, and ushered into the world A. D. 533. under two solemn instruments of confirmation, addressed jointly to

¹⁹ This distinction of the several ages of the Roman jurisprudence into "*Antiqua*," "*Media*," et "*Nova*," is founded upon the authority of Justinian himself, I. 3. 2. 3. The first of these was antecedent to the law of the Twelve Tables; the second includes all the time from thence to the commencement of Hadrian's reign; and the last, from thence to Justinian. The best authors, however, are much divided in their opinions upon this subject, which, after all, is of very little consequence; and therefore, without dwelling any further upon it, we shall

refer the reader, for further satisfaction, to the Comments of *Vinnius* and *Heineccius* upon the present passage; and likewise to Dr. *Taylor's Elements of Civil Law*, p. 15. where he has collected all the several conjectures of former writers, but adopts that of Justinian, as the best founded.

²⁰ Whatever could be done towards clearing up these difficulties, is to be found in the work already mentioned, of Jac. *Labbittus*, intitled, "*Index Legum*;" the great utility of which is fully explained by *Gian.* 3. 3.

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the Senate and People". The name by which it is most usually known is the *Digest*, from the order into which it is reduced; but, from the comprehensiveness of its plan, it is likewise called the *Pandects*"; and, with all its irregularities and imperfections, is the best of its kind that has ever yet appeared among the most refined and cultivated nations". The subject-matter of it includes every essential rule that concerns the rights of private property, the regular administration of justice, and whatever else can promote the true interests, or secure the tranquillity, of civil society. Its excellence in these particulars has been so universally acknowledged, that the ablest lawyers and politicians of the freest and most polished countries of Europe have not only honored it with a close imitation, but have even enriched their own defective systems of jurisprudence with its doctrines; and gloried in a plagiarism which has done so much credit to their judgment, and benefit to their constitutions.

The incomparable principles of reason and equity, which so plentifully abound through every page, owe no inconsiderable part of their origin to those virtuous patriots who lived in the purest times of the republic, and exercised the profession of the law with the most disinterested views; looking for no other rewards than the blessings of the poor, and the grateful attachment of those whom they had rescued from oppression. Many other of these learned sages flourished in the polite reign of Augustus, who was himself a bountiful encourager of literary pursuits: consequently, the language of their laws is peculiarly distinguished by a concise and nervous elegance; and (allowing for some technical terms, indispensable in every science) equal, in point of purity, to the style of the most approved

²¹ V. Præf. 2 & 3. ad D.

²² Hardusla "a verbo" *μαρτυρία*.

²³ Hein. Hist. J. C. 399, 400. wherein the greatest part of the objections are clearly confuted.

writers of that admired and classical age. The rest that followed, and whose names are chiefly used in the course of this work, were men of the highest stations in the government, of the most improved understandings, and the most unblemished characters; who often boldly withstood the tyrannical efforts of imperial power; and, by their courage and perseverance, gave the stamp of authority and perpetuity to those humane and liberal maxims, which, with the rest, have so greatly enriched this highly valuable collection".

CHAP.
H.

While the Digest was preparing for publication, the emperor gave orders to Tribonian, in conjunction with two other eminent professors", Dorotheus and Theophilus, to collect all the fundamental principles of the ancient law into a small manual, containing four books; which he distinguished by the title of *Institutes*, in imitation of the Institutions of Caius, mentioned upon a former occasion". These he designed principally for the use of novitiates; who, by making themselves first perfectly acquainted with the elements, might, with greater ease and certainty, proceed to an investigation of the more deep and abstruse parts of the science". It

Institutes.

was

" The compilers, without any intelligible reason, have divided the Digest into seven parts (Præf. 2. ad D.), perhaps out of some superstitious veneration for that number. Alciat. Parerg. Jur. lib. 11. c. 11. The commentators of later ages have invented a still more barbarous distinction, into *Digestum Vetus*, *Infortiatum* (a word not to be found in the classical language of Rome, and totally void of any idea), *et Novum*. Such as wish for further information upon these uninteresting particulars, may find it in Hoppii Præcog. Jur. c. 2. § 16, 17. et Gian. 3. 3. 2.

" "Antecessores."

" P. 388.

" "Sed cum prospeximus quod ad portandam tantæ sapientiæ molem non sunt

" idonei homines rudes, et qui in primis legum vestibulis stantes intrare ad arcana eorum properant: et aliam mediocrem educationem præparandam esse censuimus, ut sub ea colorati, et quasi primitiis omnium imbuti, possint ad penetralia eorum intrare, et formam legum pulcherrimam non conniventibus oculis accipere. Et ideo Triboniano, viro excelso, qui ad totius operis gubernationem electus est, necnon Theophilo et Dorotheo, viris illustribus, et facundissimis antecessoribus accersitis, mandavimus, quatenus libris quos veteres composuerunt, qui prima legum argumenta continebant, et Institutiones vocabantur, separatim collectis, quicquid ex his utile et aptissimum et undique sit elatum, et rebus quæ in

was published about a month before the Digest, by way of an introduction, though they both received their legal confirmation at the same time²⁸.

This little work is so truly admirable, both for its method and conciseness, as well as for the elegance of its composition, that it has been imitated by almost every nation in Europe, that hath ever made any attempt to reduce its own laws to a regular and scientific form. It has passed through a vast variety of editions, with commentaries suited to the particular constitutions of those countries where they were published: and whoever will take the pains to compare it with the antient writers on the Laws of England, from the twelfth century downwards, will find, that the very best of them lie under the greatest obligation to this work of Justinian, not barely for their models alone, but also for the chief part of their rules and principles, and, in some instances, where the subject requires, for whole titles almost literally transcribed from thence; how much soever their more modern successors in the same honorable profession may affect an ignorance or contempt of those fertile sources of juridical learning²⁹.

Codex Re-
petitæ Præ-
lectionis.

In the same interval, Justinian having observed, that many questions had occurred, and controversies arisen, which had never received any determination, either by the antient imperial constitutions, or by his own Code, he ordered that work to be revised; and

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“ præfenti ævo in usu vertuntur, consentaneum invenitur, hoc et capere studeant, et quatuor libris reponere, et totius editionis prima fundamenta atque elementa ponere: quibus juvenes suffulti possint graviora et perfectiora legum scita sustinere.” Præf. 2. ad D. § 11.

²⁸ C. 1. 17. 2. 12. Grav. O. J. 1. 133. Hein. Hist. J. C. § 393. Gian. 3. 3. 2.

²⁹ Of the many useful editions of this work, some of the best are those by Hoppius,

Vinnius, and Heineccius; and, which is of more value than all the rest in this country in particular, one published in 1761, with an accurate English translation of the text, and notes occasionally explaining the differences of the Civil Law with the Law of England, by Geo. Harris, LL. D. whose acute genius, correct judgment, and insinuating eloquence, render him, at this day, one of the most shining ornaments of his profession.

republished,

republished, with several corrections and alterations, together with fifty new decisions upon some other doubtful points; still preserving the same form, order, books, and titles, as in the former³⁰. This was called the *Codex Repetitæ Prælectionis*, and is the same that is now extant; the first edition having been purposely suppressed on account of its incorrectness, so that no remains of it have ever reached posterity.

C H A P.
II.

Though Justinian had thus completed this useful design of re-
forming the antient laws, the business of legislation continued always to be his favorite object. He seized every opportunity, which a long reign gave him, of enlarging his original plan, by the addition of such laws as the exigencies of the succeeding times demanded. These, he easily foresaw, would gradually increase to such a bulk, as to furnish materials for another collection; which, therefore, he intended to make, and to publish them all together, as a supplement to the former, under the name of *Novels*, or *New Constitutions*³¹. But these, though enacted on purpose to supply the omissions, and correct the faults, of the preceding publications, want much of that brevity, dignity, and solidity, which so remarkably distinguish the juridical compositions of the antients. Their sense is too often either obscured by barbarisms, or lost in a labyrinth of unne-

Novels.

³⁰ Thus says the Emperor to the Senate: "Cum novellæ nostræ tam decisiones, quam constitutiones, quæ post nostri Codicis confectioem latæ sunt, extra corpus ejusdem Codicis divagabantur, et nostram providentiam, nostrumque consilium exigere videbantur: quippe cum earum quædam ex emerfis postea factis aliqua meliore consilio permutationem vel emendationem desiderabant: necessarium nobis visum est, — easdem constitutiones nostras decerpere, et in singula discreta capitula, ad perfectarum constitutionum soliditatem competentibus supponere titulis, et prioribus constitutionibus eas aggregare." Const. de Emend. Cod. § 2. V. et. Mein. Hist. J. C. § 395, 396. et Gian. 3. 3. 3. Grav. O. J. 1. 134. Hopp. Præc. Jur. c. 2. § 18—26.

³¹ "Hoc etenim nemini dubium est, quin si quid in posterum melius inveniatur, et ad constitutionem necessario sit redigendum, hoc a nobis et constituatur, et in aliam congregationem referatur: quæ Novellarum nomine constitutionum significetur." De Emend. Cod. § 4.

cessary

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necessary phrases. Many of them, however, are of acknowledged merit and utility: witness, in particular, the hundred and eighteenth Novel, to which the English legislature will be for ever obliged, for some of the most useful principles of that famous and excellent statute for the distribution of intestates' effects²².

These laws were originally composed in Greek, a very few only excepted, that being the vernacular language of the Eastern empire. But, whether they were collected together by Justinian himself, according to his own proposition, is a matter of controversy among the learned; though the most general opinion is, that this part of the plan was undertaken by some anonymous hands after his death; to which was added a very minute verbal translation, from whence they obtained the name of *Authenticæ*. But, in the mean while, Julian, an eminent professor in the academy at Constantinople under the reign of Justin the Second, published an abridgment of them, with an elegant Latin version of his own, chiefly calculated for private use; as the former alone carried the authority of law²³.

Corpus Juris
Civilis.

The four principal parts above mentioned, collectively taken, constitute the *Body of the Civil Law*²⁴, to be generally received and obeyed through every part of the Roman dominions; and to be considered either as *promulged* or *composed* by Justinian²⁵. Under the first description are included all the Novels, and those Consti-

²² 22 & 23 Car. 2. c. 10. This statute was obtained at the instance of Sir Leoline Jenkins, a Civilian of great eminence in that reign, and Judge of the Prerogative Court, upon very substantial reasons, which may be seen at large in his Life, by the learned Mr. Serjeant Wynne, vol. 2. p. 695. And for further observations on the utility of this excellent law, V. Case of Carter v. Crawley, Sir T. Raymond, 496. The Novel itself is likewise printed at length, by way of Appendix to Dr. Harris's Institutes,

²³ Hein. Hist. Jur. Civ. § 397, 398. Grav. O. J. 1. 135. Hopp. Præc. Jur. c. 2. § 27—30. Gian. 3. 3. 4.

²⁴ "Corpus Juris Civilis." One of the best editions of this work is that published by the Elzevirs at Amsterdam, 1663, with the notes of Gothofred and Van Leewen.

²⁵ "Omnes populi legibus tam a nobis promulgatis quam compositis reguntur." Proem. ad I. § 1.

tutions of the Code that were expressly enacted by himself; under the latter, the Institutes, Digest, and remainder of the Code, that were already framed to his hands, but were only reduced to better order, and republished under his auspices.

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II.

Upon an impartial review of this princely collection, which contains the quintessence of whatever is useful and excellent among the accumulated productions of fourteen centuries, instead of enviously dwelling upon its defects, or complaining of its magnitude, we should rather admire the judgment and perseverance of those learned personages who had courage to undertake this more than Herculean labor; and reduced the whole into so reasonable and moderate a compass, as that in which it is now extant.

A multiplicity of laws is a pregnant proof of the attention of the legislative power to the welfare of the community. But, as these laws cannot, at once, be accommodated to that innumerable variety of cases which the unforeseen combinations of human affairs daily produce, they must frequently require fresh additions and amendments, which, in a course of years, will create much uncertainty and confusion, as well as impede the progress of public justice. These inconveniences are indeed patiently borne, for the sake of the concomitant benefits; but can only be remedied by the interposition of the supreme authority, as had often been attempted by former Roman princes, though never with any general effect, till the reign of Justinian: a circumstance, which places him in a distinguished and exalted point of view, above his most heroic and victorious predecessors; and holds him out an example, highly worthy of imitation, to every sovereign of the more improved and intelligent constitutions of the modern world.

Perhaps there is no country in which the necessity of a similar reformation is more apparent, than our own; where, for the last

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century especially, the laws have multiplied beyond any proportion to the preceding times. But, while we reflect, with the warmest gratitude, upon these daily exertions of the legislature, whereby our liberties and properties are so effectually protected; may we not be permitted to express a wish, that, in some future days of public repose and leisure, another English Justinian may arise³⁶; under whose benign influence and encouragement a new and lucid form may be given to that shapeless mass of juridical materials, which often staggers the resolution of the most industrious student, with too just an apprehension of never arriving at the end of his toils.

Even the famous *Abridgement* (as it is called³⁷) of the judicial decisions upon these laws, constitutes a little library of itself; and, since its first publication, loudly calls for many additions to carry on the design of the learned and public-spirited author, who devoted the fruits of a long and laborious life to this useful purpose. As this munificent institution still continues to reflect the highest honor upon its founder, so was it peculiarly happy in the person of its Proto-professor; who, on the very instant of its creation, was ready at hand to bring it to full maturity and reputation. Who, by an uncommon assemblage of intellectual talents, could reconcile the most fertile genius with the most indefatigable industry. Who, with equal facility, could sport with the muses, and think with the philosopher. Whose *Commentaries on the Laws of England* will be a more lasting and honorable monument, than the most studied and delicate touches of painting or sculpture can consecrate to his memory; and which, among its other excellencies, will be an impregnable barrier to the English language, against the daily inroads of pedantry and affectation.

³⁶ Edward I. was long ago distinguished by that honorable title.

³⁷ In 23 volumes in folio.

Having thus brought down the history of the Roman Law to its final reformation, it may be worth while to take a short view of the character of this great prince, to whom the world will lie under a perpetual obligation for these inestimable treasures. This character, which he had himself carefully erected upon the most solid basis of wisdom, justice, and munificence, received its due share of applause from such impartial judges as best knew how to appreciate its merits, though it often suffered the rude attacks of abuse and obloquy; a common tribute, which the most virtuous and patriotic sovereigns, in all ages and countries, have ever paid to envy, discontent, and faction. But, towards the beginning of the seventeenth century, a very black cloud was suddenly spread over it, in consequence of a manuscript, which the malicious industry of a Popish bigot had brought out of some obscure corner of the Vatican, and introduced to the world with all the parade and confidence of authentic history.

C H A P.
II.
Character of
Justinian.

Though this extraordinary composition had neither beginning nor ending, name nor date, to determine by whom or when it was written, it was boldly fathered upon Procopius³⁸; a person, whose distinguished learning and abilities had recommended him to the favor of the emperors Anastasius and Justin, by the latter of whom he was appointed assessor, or counsellor, to the famous Belisarius. By the advantage of this situation, wherein he continued for a long term of years, he was enabled to write a very exact and elegant history of those times, which he published, much to the satisfaction

³⁸ The title of this work is, “*Ανέκδοτα, seu Arcana Historia*.” It was first published at Lyons, in 1623, by one Nicolaus Alemannus, with a very ingenious and artful Preface, and a variety of learned and entertaining annotations, all well calculated to impose upon a negligent or prejudiced reader; and, as such, it gained considerable credit with many, especially the zealous friends of the Holy See. It is likewise reprinted, in a very pompous and magnificent manner, among the other *Byzantine Historians*, at Paris, in 1663.

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of Justinian; and, without any apparent adulation or bitterness, had related what he either then knew, or believed to be fact.

It is asserted indeed by some later authors, that, finding himself afterwards deceived in certain particulars, which he had represented too much in favor of that emperor, he intended to correct these mistakes; and it is probable that he did actually publish something to that effect. But it is very observable, that the author, who gives a catalogue of the works of Procopius, calls it by a name implying only a *retraction*³⁹ of some former errors, and of a much more confined signification than the title given to the book in question; which contains a great variety of detached stories, bearing little or no relation to what Procopius had said in his former history, and consequently could not be the thing he then professed to publish.

This circumstance entirely destroys the proof of the identity of the author, upon which the editor so much relies, and which he endeavours to establish upon the credit of Suidas; who mentions, that a book, under the name of *Anecdotes*, was written by Procopius, full of severe reflexions upon Justinian and his empress Theodora, as well as upon Belisarius and his wife⁴⁰. From hence, and likewise from divers extracts made by Suidas, which correspond with the present work, he concludes it must necessarily be the same that was written by Procopius.

But the age in which this lexicographer lived is wholly unknown; and it is certain, that his original text has been so much interpolated and corrupted in later times, that men of the best learn-

³⁹ Το δε τιταται ANTI'PPHEIΣ ἰνυ, 'αὐτὸς πρὸς Ἰουστινιανὸν ἔγραψε δι' ἑκείνου ποίησιν, καὶ ὡς αὐτὸς τις παλινοῦσα τῶν αὐτῶν μὴ κωλῶς ἐξημεῖται. Niceph. Call. lib. 17. c. 10. edit. Par. 1630.

⁴⁰ Προκοπίος—γίγνεται ἐπὶ τῶν χρόνων Ἰουστινιανῶν τῶν βασιλέων, ὑπογράφει χρηματιστὴς Βελισσάριον, καὶ ἀκολουθεῖ κατὰ πάσας τὰς συμβαλλὰς πόλεις, τι καὶ πράξεις, καὶ ὑπ' αὐτοῦ συγγραφίσας.

εἰς ἑξῆς καὶ ἑτέρον βιβλίον, τὰ καλόμενα ANEKΔΟΤΑ, τῶν αὐτῶν πράξεων ὡς ἔσται ἀμφοτέρως τὰ βιβλία 9. τὸ βιβλίον Προκοπίου τὸ καλόμενον ANEKΔΟΤΑ, ψόγος καὶ κωμῆδας Ἰουστινιανῶν τῶν βασιλέων περιέχει, καὶ τῆς αὐτοῦ γυναῖκος, Θεωδώρας. ἀλλὰ μὴ καὶ αὐτοῦ Βελισσάριου, καὶ τῆς γαμῆτος αὐτοῦ. Suidas in voce, Προκοπίος. edit. Lud. Kusteri, Cantab. 1705.

ing entertain great doubts of its authority". The utmost, therefore, that can be collected from these premises, is, that a book of this kind was published; but it cannot go so far as to ascertain the real author. The most general conjecture is, that he must have been some obscure and contemptible scribbler, who, disgusted with Justinian on account of certain religious disputes, which then raged with the most unseemly violence, could think of no better mode of revenge, than to fall foul upon his character.

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In fact, as it has been very properly observed by a judicious writer of the last century, "whoever was the real author, it does almost as much prejudice to the reputation of Procopius, as it hurts the memory of the emperor". The verbose and affected style, with the desultory and incoherent arrangement of facts, are the reverse of every thing that can be included within the description of judgment or scholarship. The charges brought against Justinian, of vice, oppression, and cruelty, are so numerous and exaggerated, that, if true, so far from enjoying his crown and life, as he actually did, for near forty years, a people, who had but the lowest degree of feeling for their own comfort, would not have suffered such a tyrant to have lived an hour. And, what amounts to the most unquestionable self-refutation of all others, the tales with which it abounds are so monstrous, incredible, and unnatural, that they would be a disgrace to the most fabulous legends, in the darkest periods of Popish ignorance and superstition⁴³. Neither are they stronger

⁴¹ V. Præf. Lud. Kust. 2d edit. ut sup.

⁴² Howell's Hist. Mundi, p. 3. c. 2. sect. 3. § 67.

⁴³ Among these stories, some of the most curious are, That Justinian was begotten upon his mother by a daemon:—That his head was formed of an aerial substance, which often seemed to evaporate, so that he was seen to walk about without any upon

his shoulders:—That a holy Monk, once coming to present a petition to him, on approaching the throne, instead of an emperor, saw it filled with a frightful spectre:—That the empress Theodora had frequently carnal communications with infernal spirits; with others of equal authority, which the reader, if he thinks it worth his while, may find at length in the work itself, c. 12.

proofs of the wickedness, than of the folly or insanity, both of the author himself, and of those who have so earnestly endeavoured to impose him upon the public, as an object worthy of attention.

Procopius was a man of the world, universally esteemed for his knowledge and probity; who had enjoyed the same high and honorable station, under no less than three successive emperors, for a long course of years; and under one of the best and greatest generals that Rome, or, perhaps, any other nation, could ever boast of; by all of whom he was respected, cherished, and rewarded. The spirit, dignity, and correctness, with which the history of his own times is written, plainly shew, that he scorned either to flatter or fear. He published it at the earnest encouragement of an able and discerning prince, who could receive honest praise and honest censure with the same complacence and equanimity.

If, amidst the complicated variety of facts, which the vast extent of his subject required him to relate, he had been guilty of any material errors, it did him honor to confess and retract them upon conviction. But what he had asserted as a man of honor, he would recant as a man of honor. He would have been ashamed to oppose unmerited praise with base calumny, or to rectify mistakes by improbable falsehoods, or incredible fables. Could he have condescended to prostitute his pen in so vile and preposterous a work as that now imputed to him, he must, in the first instance, have been a most abject sycophant; in the other, a most slanderous assassin. But, as history will justify no such suppositions, this worthy and learned historian stands fairly acquitted, in the eyes of all persons of moderation and conscience. The real author, whoever he be; from his mere insignificance and obscurity, escapes that infamy and detestation which his memory well deserves; and the whole disgrace falls upon the editor and his abettors; who, with abilities and erudition.

dition equal to a more honorable employment, rescued this despicable libel out of its congenial darkness, for the avowed purpose of blasting the good name of this accomplished and discerning prince, who so wisely checked the infant pride, and humbled the rising arrogance, of the fictitious successors of St. Peter.

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Politically speaking, the design was artful and well-timed. These aspiring pontiffs, who, for several past ages, had held the whole Christian world in the most humiliating state of thralldom, under the impious claim to a divine commission, had the mortification to perceive that many rich and potent kingdoms had shaken off their fetters. They found themselves engaged with the temporal princes of Europe, whose understandings were more enlightened than formerly with the beams of sound learning; who knew how to oppose authority with authority; who could trace this usurped power up to its original sources, and say, "that from the beginning it was not so;" who those were, whose superstitious timidity gave new life to their spiritual insolence; and who had the courage to restrain and punish it. They could say—this was Justinian—this was he who, in virtue of his own supremacy, summoned the fifth œcumenical council at Constantinople, and sent Vigilius, that turbulent Bishop of Rome, into exile; from whence he suffered him not to return, till his Infallibility condescended to set his hand to the decisions of that assembly, to which he at first had refused his assent.

No effort was to be left untried to weaken the force of so dangerous a precedent. When, therefore, some fortunate accident, as it most probably was, brought to light this musty fragment, imperfect as it was, it supplied the quiver of slander with plenty of new shafts against the common enemy; and, furnishing no evidence whereby to authenticate itself, it was easily in the power of an in-

** Mosh. Hist. Eccl. p. 2. c. 3. §. 11.

genious;

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genious and artful commentator to ascribe it to whomsoever he pleased, and to place it in those hands where it would do the most execution.

Thus did it fall to the lot of Procopius. But whoever will take the trouble to peruse the dedication and preface of the editor, and consider the bitterness and acrimony with which they are penned, will instantly perceive, that the supposed insults upon the dignity of the Holy See were the grand springs of their resentment; that these were the tones the most in unison with the master-strings of their passions; and that malice and revenge could have been the only motives for imposing such trash upon the public, which deserved no better fate than what it had already in part suffered, to be food for worms. Upon the whole, it is hoped that what has been here advanced, to rescue a respectable author from the infamy of being the parent of such spurious offspring, will be admitted to stand upon much more substantial foundations than mere uncertain conjecture⁴⁵.

It may possibly be expected, that some notice should be likewise taken of Justinian's ingratitude and cruel treatment of the great Belisarius, whereby he is reported to have deprived him of his eyesight, and to have exposed him, in his old age, to every extreme of poverty and contempt. This calumny was first broached by a later author, named Crinitus, of little note or reputation; but, being of a nature well calculated to affect the passions, has received by far the greatest degree of its credit from the pathetic pencils of a Vandike and a Salvator Rosa. This, however, is too gross a fable al-

⁴⁵ For further satisfaction on this subject, the reader is referred to the Prefaces themselves, as prefixed to the edition of the *ANEKDOTA* before mentioned; or to the *Refutation* of it by Hein. Hist. Jur. Civ. § 384. in which he has pointed out the principal foreign writers who have taken up the question

in favor of Justinian: and more particularly to the learned Dr. Howell, Hist. Mun. p. 3. c. 2. sect. 3. § 61. ad fin. who lived not long after the publication, and seems to have engaged in the controversy with equal learning and candor.

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most to require confutation. Not one of the historians who lived near those times has given the least hint to justify such a supposition: on the contrary, though Belisarius, either through the malice of his enemies, or his own imprudence, fell into a temporary disgrace, it is certain, from very good authority⁴⁶, that Justinian soon became sensible of his injuries; that he restored this preserver of his country to his fortune and station; and that he died, far advanced in years, in the arms of plenty, peace, and honor.

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To close the whole in as few words as possible, we shall now give a short sketch of the most striking parts of this prince's conduct, which are universally admitted to be true both by friends and enemies, from which every reader of discernment will easily form his own judgment; as the defects of his character in no wise depreciate the merit of his laws.

On his first appearance as the designed successor to the throne, he gave the public a rather unfavorable opinion of his regard for decorum; by prevailing upon his illiterate and superannuated uncle to repeal some laws of Constantine and Valentinian, which, to preserve the dignity and purity of the senatorian families, had forbidden all persons of that rank to marry prostitutes, or any other women in such base and infamous stations of life⁴⁷. This gave a licence to many mean and unequal matches; though the principal view of Justinian was, to enable himself to espouse a woman of the same low and disreputable occupation; which was still more extraordinary, as he was then at a time of life when, generally speaking, men are past the age of being martyrs to love, and too young to dote. Indeed it has been universally allowed, that this lady, whose name was Theodora, was possessed of such a bewitching delicacy of features, animated with such an ex-

⁴⁶ Cedrenus, inter Hist. Byzant. p. 370, &c. an author of acknowledged veracity.

⁴⁷ C. 5. 5. 7. et ib. tit. 27. 1. which were repealed accordingly by C. 5. 4. 23.

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quisite wit and sprightly conversation, that, however reprehensible his choice may appear to those whose judgment is regulated by the cold phlegm of discretion, it must be left to such as have quicker feelings of that tender and delicate passion, to decide in what degree it will admit of an excuse. The consequence of this union, however, was certainly to be lamented; as his daily increasing attachment to a woman of an ambitious and aspiring temper sometimes betrayed him into acts of imprudence and injustice, which his own better understanding could not fail to condemn. He has likewise been accused of vanity, and fondness of adulation and popularity; which is more or less blameable, in consideration of the principle from whence it flows. Irregular emotions of this kind may often proceed from an exuberant goodness of heart, and from too anxious a desire of reaping that reward from the applause of others, which a person of more moderate passions will derive, in much greater perfection, from an inward consciousness of his own virtuous intentions.

But, taking him with all these defects, and with whatever else the chaste tongue of historic truth can with justice lay to his charge, it must be confessed, that, for the course of a long reign, he governed a vast and heterogeneous mixture of people with mildness and equity; that he protected them with his arms; adorned their provinces with magnificent edifices, chiefly dedicated to the service of the true religion: that he recovered very wide and extensive regions, which had been long alienated, especially the antient capital of the empire; and that the laws, which he collected and methodized with so much care and wisdom, not only contributed to a more equal and regular administration of justice within the limits of the Roman dominions, but will be a lasting blessing to the whole civilized part of mankind to the latest posterity.

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State of Justinian's Laws in the East.—Alterations by Basilus Macedo and Leo the Philosopher.—Progress and Decline of them in the West.—Their Revival in the twelfth Century.—A particular Inquiry into that Event.

THE antient majesty of the Roman empire died with Justinian. The very best of his successors served only as foils, to heighten the brilliancy of his virtues; and the remaining history displays a melancholy scene of tyranny, impolicy, tumult, and distress; with scarcely any striking, heroic, or interesting events, to encourage the perseverance of an inquisitive reader; to enlarge his understanding, or delight his imagination. The incomparable body of laws, which has been the late subject of our inquiries, was the richest legacy this affectionate parent could have bequeathed to his people. It comprehended every essential provision that could protect their persons from insults, secure their property, decide their disputes, and teach them the true value of political order.

His care to promote the study, and perpetuate the observance, of these laws, was no less meritorious than his judgment in framing them. Wisely considering, that the best mode of instruction was that which helped to lessen the necessity of much reading, he published the *Institutes*, for the convenience of young beginners; and, with the aid of some other plain and useful rules*, made the road to knowledge

* His instructions for this purpose are thus given to the compilers of the Digest: "Sed cum vos et omnes postea professores legum timæ scientiæ constitutos etiam hoc oportuerat scire, quid et in quibus temporibus tradi necessarium studiosis credimus, ut et hoc optimi et eruditissimi efficiantur: ideo præsentem divinam orationem ad vos præcipue

knowledge at once easy, pleasant, and expeditious. To render his plan of education still more complete, and to prevent a science of this great importance to the public welfare from being debased and corrupted by ignorant teachers, he caused authentic copies of his whole collection to be sent to the two royal cities of Rome and Constantinople, and to Berytus in Phœnicia, in which alone he permitted them to be taught and expounded; forbidding the institution of academies for the same purpose, in every other city throughout the Roman dominions; and punishing all such as pretended to set themselves up for professors, with fine, and banishment from the places of their residence².

To all these he added some very wholesome regulations for the behaviour of the young scholars, who resorted to these seminaries of learning; strictly commanding them not to waste their time in mean or unbecoming sports and exercises; not to treat their masters and professors with insolence or disrespect; nor to vex, disturb, or corrupt their own companions, and especially the novitiates just entering upon their studies; but in all things to preserve the true spirit of academical discipline, and to hold it as a necessary prin-

“cipue faciendam existimamus, quatenus
“tam prudentia vestra quam cæteri ante-
“cessores, qui eandem artem in omne ævum
“exercere maluerint, nostris regulis obser-
“vatis, inclytam viam eruditionis legitimæ
“possint ambulare.” *Præf. 1. D. ad Antecess.* The whole of his plan of study is laid down at large in this Preface, and is well worth perusal.

² “Hæc autem tria volumina a nobis
“composita tradi eis, tam in regiis urbibus,
“quam in Berytiensium pulcherrima civi-
“tate, quam et legum nutricem bene quis
“appellet tantummodo volumus: quod jam
“et a retro principibus constitutum est, et

“non in aliis locis quæ a majoribus tale
“non meruerint privilegium: quia audivi-
“mus etiam in Alexandria splendidissima
“civitate, et in Cæsariensium, et in aliis,
“quosdam imperitos homines devagare, et
“doctrinam discipulis adulterinam tradere,
“quos sub hac interminatione ab hoc co-
“namine repellimus, ut si ausi fuerint in
“posterum in hoc perpetrare, et extra urbes
“regias, et Berytiensium metropolim hoc
“facere, denarum librarum auri poena plec-
“tentur, et rejiciantur ab ea civitate, in
“qua non leges docent, sed in leges com-
“mittunt.” *Ib. § 7.*

ciple, that the mind should be first completely formed and instructed, before the tongue should affect erudition³.

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It might naturally have been expected, that a system of laws so admirably digested, and so well accommodated to the general uses of civil society, would, by the mere dint of its own superior merit, have commanded an universal obedience, and a perpetual authority. The Digest and Code had been translated into Greek in the lifetime of Justinian, and probably with his own knowledge and consent, for the convenience of the Eastern countries, where the Latin language was very imperfectly understood. The Institute, however, instead of being translated, was paraphrased in Greek; in direct contradiction to an express injunction of his own, prohibiting all versions, except such as were strict and literal, lest the true sense should be obscured in a multitude of words⁴: a precaution that seemed more particularly necessary with regard to this part of the work; which, being designed as a summary, for the use of younger students, ought to have been kept, in a more especial manner, out of all possible reach of variation or misconstruction. But, as it is supposed to have been done by Theophilus himself, who was principally con-

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tinian's Laws
in the East.

³ " Illud vero satis necessarium constitu-
tum cum summa interminatione edicimus,
" ut nemo audeat neque in hac splendidis-
sima civitate, neque in Berytensium pul-
cherrimo oppido, ex his qui legitima
" peragunt studia, indignos et pessimos,
" immo magis serviles, et quorum effectus
" injuria est, ludos exercere, et alia crimina
" vel in ipsos professores, vel in socios suos,
" et maxime in eos qui rudes ad recitatio-
nem legum perveniunt, perpetrare: quis
" enim ludos appellet eos, ex quibus cri-
mina oriuntur? hoc etenim fieri nullo
" passimur modo, sed optimo ordini in nostris
" temporibus et hanc partem tradimus, et
" toto postero transmittimus seculo: cum

" oportet prius animos, et postea linguas
" fieri eruditas." Præf. § 9. V. et. Grav.
O. J. 1. 138. et Gian. 1. 10.

⁴ " Hoc autem — nobis visum est —
" sancire, ut nemo neque eorum qui in præ-
" senti juris peritiam habeant, neque qui
" postea fuerint, audeat commentarios his-
" toricos legibus adnectere: nisi tantum si
" velit eas in Græcam vocem transformare
" sub eodem ordine, eademque consequen-
" tia sub qua et voce Romana positæ sunt:
" hoc quod Græci *κατὰ νότον* dicunt; — ne
" verboritas eorum aliquod legibus nostris
" adferat ex confusione dedecus." C. 1. 17.
2. 21.

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cerned in the original composition, the emperor, perhaps, was under no apprehension of its suffering any injury³.

This, however, was one of the least mischiefs which happened to it; the succeeding princes being daily employed in corrupting its purity by new additions or alterations of their own.

Laws of Basilus Macedo,
A. D. 867.

Leo Philo-
phus,
A. D. 886.

In the course of two centuries more, Basilus Macedo entirely repealed the antient Latin originals of Justinian; and, out of the Greek versions, miserably abridged and mutilated, formed forty books, which were extended afterwards to sixty, by his son Leo, surnamed the Philosopher. The reasons assigned by the writers of that age for these innovations are, that Basilus, finding the laws now reduced to a state of great confusion and obscurity, was determined to remedy the evil, by abrogating those that were grown obsolete; by taking away all superfluities; and reducing the remainder into a narrower compass⁴.

As it does not appear that Justinian's laws wanted any such reformation, later commentators are generally agreed, that Leo's principal motive must have been envy of the glory of his illustrious predecessor, and the vain ambition of setting himself off to posterity, as a lawgiver of equal fame. But, whatever was his inducement, so far is certain, that the collection thus promulged, under the new title of *Basilics*⁵, superseded all former publications; and were the only laws in force throughout the Eastern empire, till its final extinction. So entirely were the works of Justinian sunk into oblivion in those countries, that, among the multitude of

³ Grav. O. J. 1. 138. Hein. Hist. J. C. int. Hist. Byzant. p. 569. edit. Par. 1647.

⁴ Αλλά και τους πολιτικούς νόμους πολλήν αστακίαν και συγχύσιν έχούσας ἰδόν, και τούτους καλά τῶν προσηκουσῶν προσφίξεως ἐπανασυντάξαι ἐπέκειντο· και τῇ μὲν τῶν ἀνηρημένων ἀρχαίων περιελθόντων, τῶν δὲ κυρίων ἀνακαθάρσαι το πλῆθος. Cedrenus,

⁵ Βασιλικά, which is only a new term for *Imperial Constitutions*. These are now generally published at the end of the "Corpus Juris Civilis," and are to be found in the edition already mentioned.

books

books that were brought into the West, after the taking of Constantinople by the Turks, not a single volume of them was to be found, except only of the Novels^a.

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What extent and authority they enjoyed in these Western parts, cannot easily be ascertained. But, as it is a question of no small importance towards a right understanding of the civil and political histories of the modern constitutions of Europe, we shall endeavour to trace it out, as well as the imperfect accounts of those obscure and turbulent ages will admit.

Justinian's
Laws in the
West.

The common tradition is, that, after the extinction of the Roman power in Italy, Justinian's laws were entirely disused and forgotten, till the twelfth century; when, in the course of a war between Lotharius the Second, and Roger king of Sicily, the city of Amalfi, in the neighbourhood of Naples, was besieged and taken by the Imperialists; among the plunder of which was discovered a complete copy of the Pandects. The Pisans, who had assisted the emperor with a fleet, begged this of him, and carried it away, as an inestimable prize, into their own country; in which it continued for near three hundred years, till their city was taken by the Florentines; who then conveyed it in great triumph to Florence, where it has remained ever since. The elegance and equity of these laws becoming the immediate objects of universal admiration, they were embraced by Irnerius, the most celebrated professor of that science in those days, and were taught by him at Bononia, under the special encouragement of Lotharius; who, by a public edict, gave them a general authority in all the courts of justice within his Italian dominions; in consequence of

Supposed
discovery of
the Pandects
at Amalfi,
A. D. 1137.

A. D. 1406.

^a Duck de Author. Jur. Civ. l. 5. Grav. O. J. l. 138. Hopp. Præc. Jur. c. 5. Hein. Hist. J. C. § 401, 402, 403.

which,

which they soon eclipsed the rude and imperfect systems of the Lombards⁹.

The copy here spoken of is pretended by some writers to have been the very original that was drawn up by Tribonian himself, though much doubted by others¹⁰. However, it is universally admitted to be of very high antiquity, and is the standard by which all future editions have been compared and corrected. It is now held in such great esteem, that it is never taken out to be consulted without a procession of Monks, and the performance of some superstitious ceremonies; and is well known under the name of the *Florentine Pandects*.

This is the substance of the several accounts given us by the more antient Italian and German writers¹¹; and, upon their words, has been generally adopted by the most eminent lawyers and civilians in our own country¹².

The ingenious and judicious author of the *Civil History of Naples*, well aware of the question,—How a book of this kind should be found in a country where Justinian's laws had never yet been in force?—endeavours to account for it in this manner: That Amalfi being a place of very considerable commerce, some merchant trading from thence had met with this manuscript in a voyage to the Levant, and, on his return, had made a present of it to his native country¹³.

But the whole of this story carries upon the face of it the strongest marks of improbability. Who this learned and generous benefactor

⁹ Gravina calls them "Belluinas, atque ferinas, immanesque Longobardorum leges." O. J. 1. 139.

¹⁰ Mabillon de Re Diplom. lib. 5. tab. 7. p. 356.

¹¹ Mosh. Eccl. Hist. p. 2. c. 1. § 5. Grav. O. J. 140. Gian. 11. 2. By consulting which, the reader will find all the

more antient authors who have written upon the subject.

¹² Duck de Auth. J. C. 1. 5. 13. Selden in Flet. c. 6. § 2. et in Pref. to Tit. of Honor, p. 95. Aylyffe's Par. Jur. in Prelim. Disc. p. 36. Harris in Pref. ad Inst. Blackst. Comm. Introd. § 3.

¹³ Gian. 11. 2.

was, or in what age he lived, is a profound secret. It is equally inexplicable, how he could conceive that a present of this kind could be a compliment to a whole nation, which neither acknowledged the power by which the laws it contained were made, nor had sufficient understanding to comprehend their excellence; and which suffered them afterwards to lie in obscurity, without receiving them into its own constitution.

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Similar difficulties occur upon every other part of this story. The edict of Lotharius, on which so much depends, has never yet been produced; and is generally considered as a mere invention of the Bononian professors, to flatter their own vanity, and establish the antiquity of their school. It will next appear very strange, that a prince of such distinguished learning, and so particularly zealous for the improvement of legal knowledge, should have relinquished a treasure of so much value, at the request of a few inconsiderable republicans, who were not subject to his power: that he should have given encouragement to the study of those laws, and published an edict for their observance, when, according to the present hypothesis, this must have been the only copy of them then known in Europe; and that, by wilfully divesting himself of all property in it, he had already lost the opportunity of carrying his noble intention into execution.

Neither is it less unaccountable, that the Pisans, in return for the effectual and expensive assistance of a fleet, should have thought of soliciting so whimsical a reward as that of an obsolete body of laws, which carried no authority in Italy; and which they could not then have been sure would have answered any other purpose, than that of filling up a vacant shelf in a library, or of gratifying the speculative curiosity of an antiquarian: when likewise it is far from certain, that they had any adequate
idea

idea of its real value; or, when obtained, that they made any more use of it, than the people from whom it was last recovered.

All these circumstances, when taken in one point of view, accord so ill with each other, that some very able and penetrating Civilians of later days have justly considered the whole as a fable. They particularly call in question that part of it which concerns the Pisans; the fact itself being entirely passed over in silence by all the writers of that age in which it is supposed to have happened; and the first mention of it being found in the writings of a very obscure and contemptible poet, who lived at more than two hundred years distance from the time; and who either related it upon the authority of some uncertain reports, or else invented it himself, in hopes of raising the reputation of the work, then in possession of his own republic.

That such a manuscript has long existed in the collection of those illustrious patrons of learning, the princes of the house of *Medici*, is a truth well known to all the world. How it came there, or by what fortunate accident it was rescued from oblivion, are questions of mere speculation, not in the least affecting the authenticity of

“ Thus intitled and described: “ De Præliis Tusciæ caliginosum Poema Fratris Raynerii de Grancis Pisani, Ordinis Prædicatorum, nunc primum ex Manuscripto Codice evulgatum.” It is published by Muratori, in a large and valuable Collection of Tracts, relating to the Italian History, intitled, “ Scriptores Rerum Italianarum,” tom. xi. p. 281. Mediol. 1727. The learned Editor calls it, in Præf. p. 285, “ Caliginosum Poema;” and the Author, “ Ineptissimum Poetam.” The fact alluded to is contained in the following obscure lines:

“ Africa Pisano quando auspice fertur U-
“ gone;

“ Mælia Parthenopes datur et quando omæ
“ per æquor,
“ Uade fuit Liber Pisani gestus ab illis
“ Juris, et est Pisis Pandecta Cæsaris alii,
“ Civibus adjunctis animo mente atque fidei.”
Lib. 3. juxta fin. p. 314.

We are obliged to Heineccius, Hist. Jur. Civ. § 414. for his reference to the above works, without which we should have probably remained in utter ignorance of it; and as the collection in which it is printed is much too voluminous to be in the hands of the generality of readers, it is hoped this will serve as an apology for troubling them with a quotation which affords so little real satisfaction.

the work itself, which depends upon the clearest evidence of antiquity, and has never yet been the subject of controversy.

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As no certain conclusions, therefore, can be drawn from the foregoing facts; the revival of the Civil Law, which produced so many material changes in the infant and imperfect constitutions of modern Europe, and gave so new an aspect to their legal systems, must be sought for in other more adequate and probable causes.

The Romans had almost reduced conquest to a science. Their behaviour to the vanquished was usually regulated by the degree of opposition they encountered; by the temper of the people, or by the state of civilization in which they found them. Generally speaking, they treated them all with great moderation and humanity, and did their utmost to alleviate the miseries of subjection. Some they received with open arms, and indulged with the privileges of citizens¹⁵. Among others, they built cities and planted colonies, not only to secure their allegiance, but to reconcile them to their own manners, and to teach them to become Romans¹⁶. Those who had already systems of laws of their own, and wished not for a change, were protected in the enjoyment of them by their paternal care and attention¹⁷.

The practice of the Romans in propagating their laws.

¹⁵ Cicero, among his other rules for waging a just war, gives the following account of the conduct of the antient Romans upon such occasions: "Suscipienda quidem bella sunt, ob eam causam, ut sine injuria in pace vivatur. Parta autem victoria, conservandi sunt ii, qui non crudeles in bello, non immanes fuerunt: ut majores nostri Tusculanos, Æquos, Volscos, Sabinos, Hernicos, in civitatem etiam acceperunt; at Carthaginem et Numantiam sustulerunt.—In quo tantopere apud nostros justitia culta est, ut ii, qui

"civitates, aut nationes devictas bello, in fidem recepissent, earum patroni essent more majorum." Off. i. 11.

¹⁶ 'Ρωμαίοι τὴν Ἰταλίαν πόλεμῳ κατὰ μέγαν χειρομένοι, γῆς μέρος λαμβάνον, καὶ πόλεις ἐφικόν, ἢ εἰς τὰς πρῶτας οὐσὰς χληρονομοῦν ἀποσφύον κατέλιγον, καὶ ταῦτα μὲν αὖτε φρονεῖν ἐπισκοποῦν. App. de Bello Civ. p. 353.

¹⁷ Thus says Cicero of the Lacedæmonians: "Nostri imperii præsidio disciplinam suam, legesque conservant." Pro Murena, § 35.

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In other instances, their laws followed their arms ; and the equity of the one atoned for the violence of the other. These laws, when planted in countries before entirely barren of any regular principles of government, produced peculiarly happy effects : they substituted order in the room of anarchy ; they enhanced the value of private property and personal liberty ; and taught a rude and unconnected multitude the comforts of civil society. From this view of facts, it is easy to discern, why many branches of these wise laws were insensibly preserved, and why most of these constitutions were impregnated with the seeds of Roman jurisprudence ; though they were too often overgrown and rendered fruitless by the weeds of barbarism.

Theodosian
Code in the
West.

The reasons, why Justinian's collection made so slow a progress in the West, are too obvious to require an explanation. But the Theodosian Code, as well as some of the earlier laws heretofore mentioned, having obtained a firm establishment in those parts long before the final division, never totally lost their authority, though frequently debased and adulterated by a mixture of a very inferior quality. The Northern ravagers, who had forced themselves by violence into the primitive seat of the Roman empire, finding they had to contend with a formidable enemy, who, though much degenerated from the valour and reputation of their ancestors, still bore the name of Roman, made it their first object to secure their new acquisitions by mere military institutions and precautions, which, in time, gave rise to the Feudal system, so famous in later ages. But, when they once felt themselves upon firmer ground, it became more necessary to attend to the improvement of their internal police.

Laws of the
Northern
nations.

It may certainly be concluded, that they entertained no great veneration for those inhospitable regions from whence they derived

their origin; because they left them with a determined resolution never to return. Neither is it probable, for the same reason, that they had any very regular or useful schemes of government among themselves; which, by affording protection to individuals, would have attached them to the place of their nativity, and made them overlook the other disadvantages of climate and situation. Some local usages or customs they undoubtedly brought with them; though they were very inadequate to those enlarged plans of civil policy, which they found themselves under a necessity of establishing, in the more opulent and genial climes wherein they had now the good fortune to be settled. These considerations naturally directed their views to those inexhaustible magazines of political wisdom already in possession of the vanquished Romans; from whence they undertook to supply the defects of their own laws.

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The first attempt of this kind was made by Alaric; who, succeeding to the throne of the Goths in Spain, ordered an abridgment to be formed of the three Codes of Gregorius, Hermogenes, and Theodosius; of the Sentences of Paulus, and the Institutes of Caius; all which were drawn up accordingly by Anianus¹⁸. But, not to derogate from his own princely dignity, as if he could not govern his subjects without the help of foreign laws, he directed that this Code should be published in his own name, and that the laws therein contained should receive their whole binding authority from himself.

Code of
Alaric,
A. D. 484.

Theodoric, king of the Ostrogoths, who conquered Odoacer, king of the Heruli, and made himself master of all Italy, expressed a remarkable esteem for the Roman constitution. This prince, whose

Theodoric,
A. D. 490.

¹⁸ A full account of this is to be found in Goth. Prol. ad Cod. Theod. c. 5. where all the authorities are very carefully collected, to which, therefore, we refer the reader and likewise to Gian. 3. 1. 1.

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character would have shined to advantage, even in a much politer age and nation, had spent some of the earlier years of his life at Constantinople; where he had been warmly careſſed by the emperors Leo and Zeno, and had been aſſiſted by them in his wars againſt the Heruli. Being confirmed in his new dominions, he repoſed great confidence in his lieutenant Caſſiodorus, a noble Roman, by whoſe advice he carefully preſerved the antient form of government in Rome; which, indeed, had not yet been much diſturbed or altered by preceding conquerors. The moſt important civil offices he conferred upon Romans; and permitted his Roman ſubjects to enjoy their own laws, while he governed the Goths by laws peculiar to themſelves¹⁹.

The ſame equitable policy was, by his own dying recommendation, adopted, as far as was practicable, by his ſucceſſors. But the diſcontented Goths, unwilling to be civilized, and too fond of their own barbarous inſtitutions, rebelled againſt their ſovereigns; and, being weakened by their internal diſſenſions, were overcome by Belifarius; who, once more, recovered the capital of the Roman empire, and reſtored a great part of thoſe territories to their original lords. This good fortune, however, was of very ſhort duration; it ended with Juſtinian; and, ſoon after his death, this city, with its dependencies, fell an eaſy prey to the victorious arms of the Lombards.

Laws of the
Lombards.

Theſe unpoliſhed invaders ſoon became too ſenſible of the utility and excellence of the Roman laws, not to incorporate many of them into their own ſyſtems; which is evident from a Code of the Lombards, now extant, in three books, and clearly diſpoſed after the plan of Juſtinian's²⁰.

¹⁹ Gian. 3. 2. 1—6. and the authorities “*vate Longobardorum Leges, cum Comm.* by him cited.

“*Andrea de Barulo. Lugd. 1600.*”

²⁰ V. a book intituled, “*Veteres—Reno-*

Several

Several other tribes of the same sort of people occasionally adopted similar practices, as they found them suit their own peculiar exigencies. C H A P.
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Thus, the Franks, who are represented as a much more settled and less roving nation than the rest, embraced the Roman plan of policy, and, in particular, regulated their contracts and marriages upon the principles of the Roman law²¹. Many parts of the same laws, especially of those collected by Alaric, were used in very early times in Narbonne Gaul, now Languedoc, and the neighbouring regions; and though the inhabitants of these countries were often invaded, and mixed with other rovers, particularly the Visigoths, the Roman laws never entirely lost their authority among them²². Franks.

But, after all, this reception was very partial and imperfect; being chiefly confined to the Imperial Constitutions, which were likewise much corrupted by a baser alloy; while the more liberal and rational parts, contained in the Institute and Digest, were neglected or forgotten.

Justinian, who had caused these collections to be composed for the general benefit of a very extensive domain, certainly intended that all persons should know the rules by which they were to be governed. For this purpose, as we have already seen²³, he established universities, where they were to be taught, and furnished them with authentic copies, by his own express command; from whence it is very possible that many others had been made for the use of particular persons. But most of these were afterwards lost or destroyed by various accidents. Even those that survived were in few hands; their

²¹ Εἰσι γὰρ Φραγγοὶ ἢ νομαδὲς, ὥσπερ αἰεὶ οἱ τῶν βαρβάρων, ἀλλὰ καὶ πολῖται ὡς τὰ πολλὰ χεῖναι Ῥωμαϊκῇ, καὶ νόμοις τοῖς αὐτοῖς, καὶ τὰ ἀλλὰ ὁμοίως ἀμφὶ τὰ συμβόλαια καὶ γάμους.

Agath. de Reb. Gest. Just. p. 13. edit. Par. 1660.

²² Abr. Chron. de l'Hist. de France, par Mezeray, tom. i. p. 240.

²³ P. 493.

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Confused
state of Eu-
rope in the
middle ages.

Charle-
magne,
A. D. 800.

Revival of
learning in
the twelfth
century.

true value was very imperfectly understood; and their use was destroyed by the ensuing confusions.

It is well known, that, during the middle ages of Christianity, the Western world was disturbed by a long succession of war and rapine. Almost all the nations of the earth were then in motion; as if one general spirit of discontent agitated them all, and made them thirst after others' lives and possessions. The very conquerors themselves, though descended from the same stock, began, in time, to turn their arms against each other; and plundered and murdered one another with as little remorse as they did the antient inhabitants.

In the midst of these ages of tumult and ignorance, appeared Charlemagne, a king of the Franks, or Germans. Having extinguished the kingdom of the Lombards in Italy, he was received with vast pomp and solemnity at Rome by the Pope; who, in the affected plenitude of his power, conferred upon him the title of Emperor of the Romans, which has been the distinguishing mark of dignity with all his successors to this day. This illustrious prince was endowed with a most exalted genius, and a capacity equally suited either to war or peace. As, in his own idea, he now supplied the place of the antient princes of Rome, he determined to restore the authority of the Roman laws. But, being engaged in a perpetual series of wars, and unable to procure the books necessary for that purpose, he was obliged to abandon this laudable design; and thus the cause of jurisprudence, as well as of learning in general, still lay under a deplorable state of neglect for some ages to come²⁴.

Towards the twelfth century, the violence of these storms was considerably abated. The rudeness of the Northern peasants began to soften in milder climes, and more comfortable habitations. The

²⁴ Duck de Aut. J. C. 1. 5. 12.

conquerors

conquerors forgot their primitive national ferocity, and the posterity of the vanquished inhabitants their bondage. They were blended with each other, and constituted one people, united by a common interest. The empire of the Franks, or Germans, had made a quick progress, and was become the most extensive and respectable power in Europe. Beside that vast tract of country called Germany, it reached over a considerable part of Gaul; and many other inferior states owed to it a feudal obedience.

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Add to this the growth and establishment of Christianity, which, though too much corrupted by superstition, had force enough to subdue the more brutal practices and grosser manners of Paganism; and, by the superiority of its moral excellence alone, to meliorate the hearts of its votaries; to enlighten their minds; and to make them susceptible of those impressions, which are the most conducive to the tranquillity and harmony of civil society.

This then was a fair opportunity for learning, which is ever of an active nature, to break forth from her retirement, and to make another effort towards the recovery of her antient dominion. And we are assured, in fact, by the most credible authorities, that the spirit of literature did begin to diffuse itself through the Western world, in the eleventh century, with uncommon ardor and emulation; and that it met with a general encouragement among Christian princes²³.

In this it was much assisted by Diederic, or Desiderius, Abbot of *Monte Cassino*, who had been forced into the pontificate much against his own inclination, under the title of Victor the Third; and was a prelate of very considerable learning, honesty, and moderation, for his time; perhaps, of too much, to be borne by a

Pope Victor
III.
A. D. 1086.

²³ Mosh. Eccl. Hist. vol. 1. p. 565. § 3.

profligate,

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profligate, unprincipled, and intriguing conclave. He employed a short reign of two years in many pious endeavours for the peace of the church, and for the promotion of useful knowledge. To this end, he erected a magnificent library at his own favorite convent; and furnished it with books chosen with judgment, and copied at a very great expence. Among these were preserved the Institutes and Novels of Justinian; to which the emperors of the West had frequent recourse, by way of models for the improvement of their own constitutions. About the same age likewise a copy or two of the Code was known to exist in France; though, not having then the force of law, it was too much disregarded by the professors of that science²⁶.

But legal and political knowledge being, of all others, one of the most popular and interesting, the Roman laws soon began to feel the benefit of this general revolution in favor of literature. Hitherto, indeed, their operation had been extremely precarious and confined. In some provinces they were admitted only under the mere idea of traditionary usages, and unwritten law. In others, though incorporated with their written systems, they were so deformed and altered, that they lost most of those effects which the makers of them intended; and in none did they prevail by the virtue of their own authority, except in the small exarchate of Ravenna, which, for several ages, continued part of the Grecian empire.

Universities.

Universities, and other seminaries of education, were, by this time, founded in most of the principal cities of Europe, under the patronage of the Christian princes²⁷; and though learning was in the first stage of infancy, she even then attracted the

²⁶ Gian. 10. 11. and the authorities by him quoted. ²⁷ Mosh. ut sup.

notice of mankind, and drew after her a great multitude of suitors and admirers.

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One of the earliest of these institutions was at Bologna, which was said to have been founded by Theodosius; while others ascribe it to Mathildis, a powerful princess in those parts of Italy²⁸, by whose particular encouragement the Law was first taught by a master of the name of Pepo. Some later writers have thought proper to treat this professor with great contempt²⁹; and, perhaps, deservedly, when they judge only by comparison. In those days, before the happy invention of printing had promoted a more easy circulation of the materials of knowledge, the very possession of a manuscript was a rare and valuable acquisition. It intitled the possessor to no small degree of respect and consideration, at least with a class of novitiates, who depended upon him for the text as well as the comment; who, very possibly, were themselves so ignorant of letters, as to have no other means of acquiring them, but with their ears, or of retaining them, but in their memories. In such cases, therefore, a clear and articulate recital of the original author; an occasional explication of an obscure passage; or any other attempt to inculcate the meanest rudiments of literature; instead of censure, justly demanded the applause and encouragement of every liberal mind.

Bologna.

Pepo the first
professor.

But the reputation of the Bononian chair was soon established by Irnerius, a German; who, having studied at Constantinople, returned and settled at Ravenna, where he soon distinguished himself as a man of such extensive learning, that he was invited to Bologna, by the united voice of the most respectable inhabitants. In this

Irnerius,
A. D. 1128.

²⁸ Hopp. Præc. Jur. C. § 4, 5. Grav. O. J. 1. 143.

²⁹ Hein. Hist. Jur. Civ. § 415. Grav. ut sup.

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city he first opened a school of philosophy; when a mere grammatical dispute happening to arise among the jurists, concerning the meaning of a particular word, he was tempted to apply himself to the study of the law; in which he acquired so great skill, that he soon eclipsed the humble professor of that science. His studies were chiefly confined to the Code, Institutes, and Novels of Justinian, those being the only parts of that collection then known in Italy. Upon these he wrote comments, and likewise abridged and arranged them according to the order of the Code, so as to shew at one view in what points they agreed or differed.

Where the Digest lay concealed all this while, is not so easy to say; though it is certainly a matter of wonder, that this, which contained the most pure and refined parts of the whole Roman laws, and the most important maxims of universal jurisprudence, should at this time be so utterly neglected in a country for whose use it was originally compiled³⁰. Though Justinian had taken every possible precaution to preserve the knowledge of it in its original purity, by instituting academies, and prescribing a method by which it was to be taught, yet was it too soon disregarded, even in Constantinople itself.

In Rome, indeed, it suffered a much harder fate, by the ravages of the barbarous nations of the North; though some parts of it still existed, as it were by accident, in the West, especially in the southern provinces of France. In these it appears to have been known about the tenth and eleventh centuries; to have been occasionally used by Burchardus, Bishop of Worms; and, after him,

³⁰ This observation will have greater force in the words of the very learned Neapolitan Civilian: "Ma la più bella parte, ch'era quella delle Pandette, ed ove racchiudeasi
" il candore, e la pulitezza delle leggi Romanæ, era a noi molto più nascosta, e rara la notizia." Gian. 11. 2.

by Ivo, Bishop of Chartres, who laid the foundation of the first part of the Canon Law; afterwards digested and published by Gratian the Monk, under the title of *Decretum*, in the pontificate of Eugenius the Third".

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A. D. 1150.

The numerous difficulties which learning had to combat with in the days of its infancy, frequently called for the protection of the ruling power; and fortunately found a noble and munificent patron in the person of Frederic Barbarossa. This emperor, by the advice of his nobility, prelates, and other officers of state, published a very liberal edict for the benefit and security of students, of whatever faculty, resorting to their respective places of education; in which the lawyers have the honor of being mentioned with peculiar marks of his esteem"; and of being considered as the main pillars of orderly government, with equal reference to every object of it, as well spiritual as temporal.

Frederic Bar-
barossa,
A. D. 1158.

After this view of the state of the Roman Laws upon the continent, it will not be improper to conclude the whole, with a summary account of their progress in Great Britain.

State of the
Roman Laws
in Britain.

This island, though in those days situated at the real extremity of the known world, did not escape the all-coveting eye of the Roman power; and, after many vigorous struggles for the space of more than one hundred and thirty years, was forced to yield to the supe-

³¹ Gian. 7. 2. Hopp. Præc. Jur. c. 8. § 14-19. Duck de Aut. J. C. 1. 7. 1-5. Seld. ad Flet. c. 6.

³² "Omnibus qui causa studiorum peregrinantur, et maxime divinarum atque sacrarum legum professoribus, hoc nostræ pietatis beneficium indulgemus, ut ad loca, in quibus literarum exercentur studia, tam ipsi, quam eorum nuncii, veniant, et in eis secure habitent. Dignum namque

"existimamus, ut cum omnes bona facientes nostram laudem et protectionem mereantur, quorum scientia totus illuminatur mundus, et ad obedientiam Deo, et nobis ejus ministris, vita subditorum informatur, quadam speciali dilectione ab omni injuria defendamus." This edict is subjoined to C. 4. 13. 5. Hein. Hist. J. C. § 416.

rior arms of the virtuous and excellent Julius Agricola³³. From that period she became a favorite object of the Roman princes; some of the greatest of whom visited her in person, received her under their immediate protection, and erected ramparts to secure her from the incursions of the savage Caledonians. Thus, fortunately subject to a master who studied her interest, she exchanged the barbarous usages and arbitrary dictates of the Druids, for the mild and rational laws of the Romans. She cultivated their language, adopted their arts, intermixed with their blood; and continued in this state of happy union, till the Romans, no longer able to defend themselves, were obliged to leave her a prey to the Scots, Picts, Saxons, and such other fierce and rapacious invaders: a desertion, which was lamented in the most feeling and pathetic strains by the defenceless Britons³⁴.

Though the Roman Laws, which had universally prevailed near four centuries³⁵, gradually lost their force, from the frequent change and succession of their conquerors, it cannot be doubted that many of them still continued to exist, under the idea of traditionary customs, though the knowledge of their real origin was utterly lost. As the new inhabitants of this island had fewer connexions with the continent, and had many different and singular schemes of civil policy in view, it is no wonder that they should have been less acquainted with, and consequently have had less respect for, those valuable collections of Theodosius and Justinian, which were not compiled till after their disunion³⁶.

Revival of
the Roman
Laws in
England in
the reign of
Stephen.

To all appearance, therefore, the Roman Law was entirely unknown in this country for the space of seven hundred years. But,

³³ Tac. in Vit. J. Agric.

³⁴ Duck de Aut. J. C. 2. 8. 1—10.

³⁵ Seld. in Flet. 4.

³⁶ Seld. ad Flet. 7. 1.

in the reign of King Stephen, Vacarius, a Lombard, who had been educated in the school at Bononia, came over to England, and opened a course of lectures at Oxford, where he was attended by a vast concourse of auditors, both rich and poor. The beauty of its composition, the extensiveness of its design, and the sound principles of philosophy and policy with which it abounded, soon put to shame the dull scholastic learning of the monkish drone of that age. The ecclesiastics, trembling at the thoughts of being roused from their long repose of indolence and ignorance, immediately grew jealous of the reputation which this new science had gained, among the younger and more liberal inquirers into rational learning; and, as prejudice is ever of a malicious temper, they exerted their interest to obtain an edict from the king for its suppression.

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In due time, however, under the more liberal and auspicious reign of Henry the Second, proper justice was done to its merits. The former envious opposition, instead of retarding, rather quickened its progress. Some of the clergy of higher rank, and more enlarged understandings, entered upon the study of it with great assiduity and success. Among these, by the advice of Theobald, archbishop of Canterbury, was the famous Thomas Becket, who had already been a pupil of Irnerius; and, having afterwards united in his own person the two highest offices both of the church and the law, introduced it into the Court of Chancery, which has ever since been fundamentally governed by its rules. In a short course of time, other writers on juridical subjects, pleased with the good sense and systematic method of Justinian's books, began to digest their own works under similar forms; many of which are extant at this day, and are deservedly considered as the original and standing

oracles of the Common Law of England; though they much oftener deliver their precepts in the concise, nervous, and persuasive language of those venerable fathers of Roman jurisprudence, Paulus, Ulpian, and Papinian.

From the foregoing accounts of the sudden and general revival of this long-neglected science, it is evident that an event, so important in its consequences, could never have been owing to such a trifling accident, as the discovery of a lost volume; but to that laudable spirit of literary inquiry which now began to pervade the modern nations of Europe. The copies of this excellent work, calculated for more peaceable times, and more regular constitutions, were now gradually brought forth out of dust and obscurity; and were admired, studied, and imitated, by all those who best understood the true principles of regular policy. They found a very hearty reception from most of the Christian princes, who borrowed such of them as were best calculated to supply the defects of their own laws: and they were still more eagerly embraced by the clergy, in whose hands the infant learning of the times was, as yet, chiefly engrossed; though not with so good an effect, or so honest a design. It must indeed be confessed, that monks and other ecclesiastics were the chief persons who then aspired to the character of scholars, or men of business in the civil departments of the state; from which absurd and incoherent mixture of law and theology, arose a motley and amphibious monster; a lawyer too much of a priest, and a priest too much of a lawyer, to do credit to either profession.

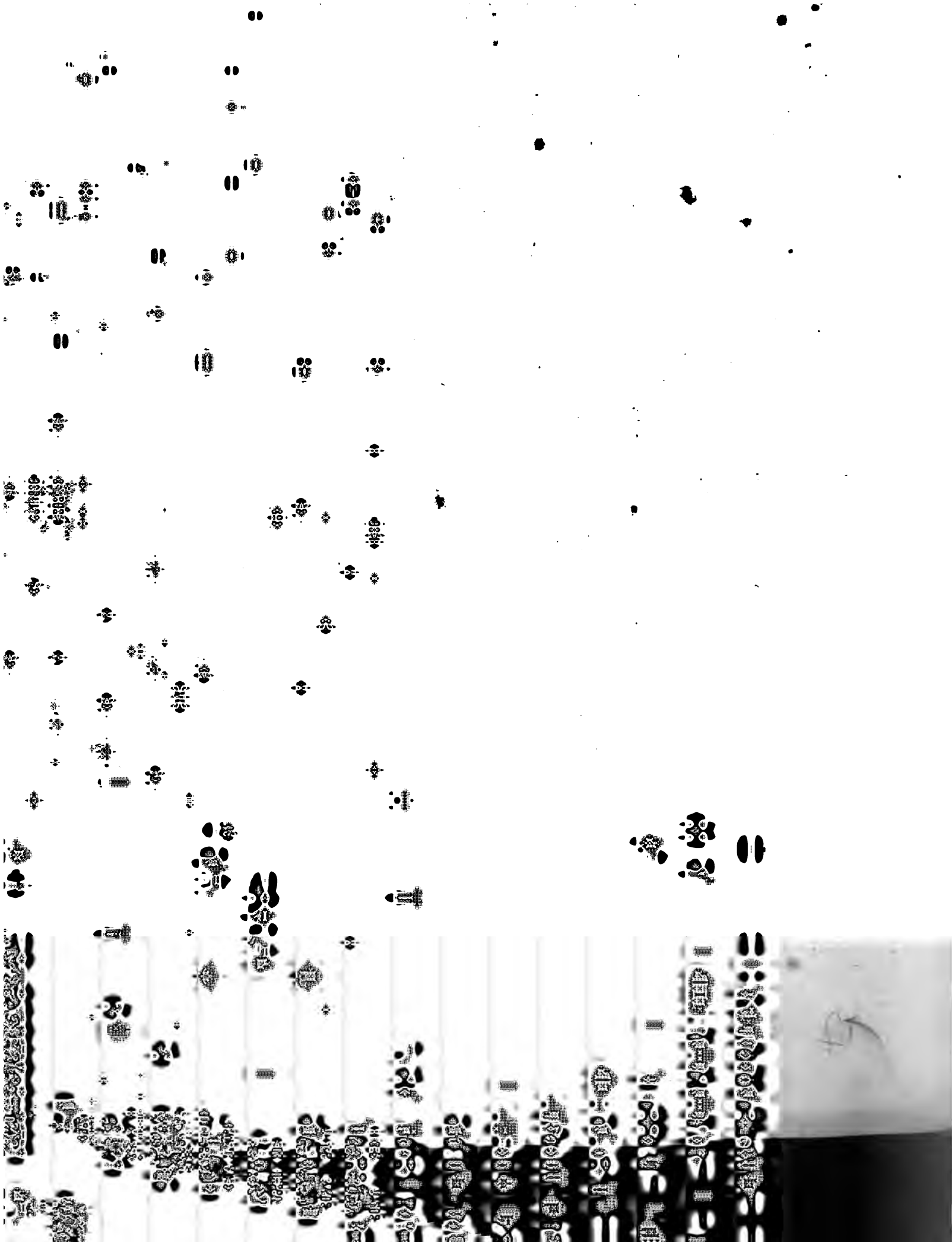
The Church of Rome, which always assumed a dictatorial power over the consciences of her votaries, adopted Justinian's works as her model; and garbled their treasures, in order to compile that
monstrous

monstrous and heterogeneous mass of spiritual jurisprudence, now well known by the name of the *Canon Law*; by the force of which, she usurped, and so long maintained, an absolute power over every temporal prince in Christendom. By perpetually corrupting these purer sources of civil policy, and by perverting and misapplying its maxims, she has sullied the fair character of the Roman Law in general; and caused it to be suspected of maintaining doctrines, which the learned and liberal authors of it despised and abhorred.

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Having now traced the progress of this famous system of Laws through a succession of near two thousand years, we shall humbly take leave of our readers for the present; hoping that, in due time, we shall be able to fulfil the remainder of our design, which will open a much wider field of entertaining and interesting disquisition.

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